

**Divining the Gods:  
Religion and Authority in Attic Oratory**

submitted by

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“Fortunately, the question of whether spiritual entities exist falls outside my professional purview. As I understand it, historians of religions ought to concern themselves with such things *only at second hand*, for ‘religion’ is not the sphere permeated by gods, demons, or spirits of whatever kinds. Rather, it is the sphere of people who discuss and ponder such matters and try to live their lives consistent with the kind of world they describe and imagine.

Whether or not gods fill the cosmos, they populate a good many conversations.”  
(Bruce Lincoln, 2012, preface to *Gods and Demons, Priests and Scholars: Critical Explorations in the History of Religions*)

“He tries to express all modern life in the terms of Greek mythology, because the Greeks looked very straight at things, and Demeter or Aphrodite are thinner veils than ‘The survival of the fittest’, or ‘A marriage has been arranged’, and other draperies of modern journalese.”

(E.M. Forster, *The Longest Journey*)

“The historian of ancient Israel or of Christianity before the twelfth century must study the wiring systems and lightning conductor that tapped or diverted the irruptions of supernatural power into social affairs; the historian of ancient Greece is confronted instead with a succession of cosmologies, search for order and meaning that required the gods themselves to be subject to a predestined pattern. It is not a very long step from Homer’s Olympus to the carefree, wholly detached gods of Epicurus.” (Sally Humphreys, 1975, “‘Transcendence’ and Intellectual Roles: The Ancient Greek Case’, 92.)

## ABSTRACT

This thesis offers an examination of religion in the legal and political speeches of fourth-century BCE Athens. It studies how litigants in the law courts and speakers in the Assembly construct and use religious discourses, analysing what this reveals about the place of religion in the legal and political decision-making processes of classical Athens. The thesis explores not only *what* the orators said about the divine but furthermore dissects *how* they could say what they do. To do so, this study concentrates on the notion of 'religious authority', which it takes as a dynamic and discursive constructed-and-contested process. This focus on religious authority allows for a recognition of both the asymmetry inherent in the relationship between orator and audience and the individual agency of orators, understanding their speeches as varied appropriations of religious ideas and notions and practices by individuals within a specific social context. Research on religion in Attic oratory falls largely into one of two strands: either focusing on the value of the orators as sources for 'popular' morality and religious thought, or examining the use of religion in the texts solely as rhetorical tools of persuasion. Both these approaches treat the orators' speeches as a cohesive body and do not take sufficient account of the variety and differentiation found within this corpus, which is something this study aims to do. It does so by investigating a number of sources for religious authority which orators draw on as building blocks for what can be said about the gods: this includes divine signs such as oracles and dreams, as well as oaths and laws. Ultimately, by dissecting the complex process of speaking authoritatively and persuasively about the gods in the law courts and the Assembly, this thesis contributes to our understanding of the place of religious conceptions in Athenian democratic society.

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## NOTE ON TRANSLATIONS, TRANSLITERATIONS AND ABBREVIATIONS

The abbreviations of authors and works used in this thesis follow the conventions of the Oxford Classical Dictionary. For the works of the Attic orators I use the standard numbering. In the case of Hyperides, for whom there is no one standard way of numbering the speeches but three competing ones, I follow Frederic George Kenyon's numbering in the OCT edition (1906), who enumerates the orations as 1. *In Defence of Lycophron*, 2. *Against Philippides*, 3. *Against Athenogenes*, 4. *On Behalf of Euxenippus*, 5. *Against Demosthenes*, 6. *Funeral Oration*.

Translations of the speeches of the orators are adapted from the 'Oratory of Classical Greece' series of the University of Texas Press. Translations of all other Greek texts are adapted from the Loeb Classical library. For reasons of space it was necessary to cut the full Greek original of quotations, though in most cases I retain the relevant passages in Greek in shortened version in the text.

For the transliterations of Greek names I follow the increasingly common composite approach of retaining Greek spelling for most names, except for cases where the peoples and places are so well-known that anything but the Latin spelling would be an eye-sore.

## Introduction

As accounts of the political and legal decision-making processes which took place in the Assembly and the law courts of fourth-century Athens, the speeches of the Attic orators have long been valued as sources for the study of the economic, social and political histories of the classical city.<sup>1</sup> A collection of over one hundred orations delivered at the assembly meetings and in law courts, spanning the century between ca. 420 and 320 BCE, Attic oratory is a source uniquely rich in description both detailed and surveying. Yet as sources for the religious history of Athens, the orators have escaped a similarly thorough and sustained excavation. Scholarship has approached religion in oratory often either as evidence for ‘popular religion’, or as standard rhetorical topoi and rather uninspired appeasements of its audience by reference to piety and the goodwill of the gods.

While such readings are perhaps justified to some extent, they do not present the full picture. This thesis contributes to the redress of this balance by offering an examination of religion in the legal and political speeches of fourth-century BCE Athens. It takes as its subject *what* the Attic orators said about the gods, the gods’ relationship to the mortal sphere, and the human experience of negotiating this relationship, and dissects *how* orators could say what they did about the gods. This latter point is important: this study aims to pay attention to how religious discourse is constructed in the public settings of forensic and deliberative oratory and to do so utilises the notion of ‘religious authority’. This focus on religious authority allows for a recognition of both the asymmetry inherent in the relationship between orator and audience and the individual agency of orators, understanding their speeches as varied appropriations of religious ideas and notions and practices by individuals within a specific social context. Consequently, it supplements the reading of the religious discourse in oratory as an expression of ‘popular religion’. The aim of the thesis is to show how litigants in the law courts and

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<sup>1</sup> See Todd (1990), esp. 159-160, who entertains the notion of how one might write such histories without the orators.



speakers in the Assembly construct and use religious discourses and to demonstrate what this reveals about the place of religion in the legal and political decision-making processes of classical Athens, as well as the construction of religious authority in Athenian society more generally. This introduction first overviews relevant scholarship on the topic and delineates the place of this study within these fields of research. It will then elucidate a number of choices which this thesis has made - choices of subject and its limits, of approach and its limitations, and of structure.

## Overview of scholarship

Studies of religion in oratory largely fall into one of two strands. The first, and oldest, approaches the surviving speeches of the ten Attic orators as sources for popular religion. While the orations engaged the attention of nineteenth-century scholars and schoolmasters mainly for their stylistic qualities and educational and rhetorical value, towards the end of that century the content of speeches as historical and social commentaries began to receive more sustained scrutiny too. Heinrich Meuss' 1889 *Die Vorstellungen von Gottheit und Schicksal bei den attischen Rednern* was the first to expressly focus on the religious thought of the orators, stressing the value of these texts as sources for 'popular' morality and religious thought.<sup>2</sup> This approach is based on the recognition of the nature of both forensic and deliberative oratory as persuasive and adversarial: the goal of both *rhetors* in the Assembly and litigants in the law courts was to convince a majority of their audience. In both settings this audience would have comprised of male citizens, who are usually taken as representative of the Athenian *demos*.<sup>3</sup> The attitudes and ideas the orators express therefore need to be relatable and convincing to the

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<sup>2</sup> Meuss (1889). However, see also Karl Friedrich Nägelsbach, whose *Die nachhomerische Theologie des griechischen Volksglaubens bis auf Alexander* appeared already in 1857 and advocated for a shift of focus from myth and philosophical texts to oratory and tragedy as sources for the content and spirit of the views "welche sich im Privat- und öffentlichen Leben des Griechen ausgesprochen, welche ihn in die Volksversammlung, in die Gerichtssitzung, in das Theater und auf seinen Feldzügen begleitet (...)" (v-vi).

<sup>3</sup> The audience of forensic speeches would only be citizens over thirty given the age requirement for election as judge by lot: cf. Hansen (1999), 89. On the social composition of the audience and identity of *rhetors* in the Assembly, see also Chapter One.

audience if they are to persuade them, meaning their discourse can be considered part of a common ‘ideology’.<sup>4</sup> Applying this theory to religion, Jean Rudhardt’s *Notions fondamentales de la pensée religieuse et actes constitutifs du culte dans la Grèce classique* (1958) and Kenneth Dover’s *Greek Popular Morality in the time of Plato and Aristotle* (1974) continued Meuss’ approach of using the orators to construct a picture of popular Athenian and/or Greek religion and moral values, as do the more recent works of Jon Mikalson (1983; 2010) and Gabriel Herman (2006).<sup>5</sup> These scholars variously take the orators either as principal sources for an investigation of the prevailing beliefs and values commonly held in fourth-century Athens, or in combination with comedy and particular philosophical and historiographical texts. However, by focusing on the Athenians’ ‘popular religion’, these studies often take a coherency and consistency within the speeches for granted. In his *Athenian Popular Religion* (1983), for example, Mikalson presents catalogues of oratorical passages as representations of the homogenised opinion of the Athenian *demos*, explaining his goal to unearth “the consensus of popular religious belief, a consensus consisting of those beliefs which an Athenian citizen thought he could express publicly and for which he expected to find general acceptance among his peers”.<sup>6</sup> Similarly, Herman takes forensic speeches as “not just ordinary literary passages, but unique and truthful reflections of the Athenian value system: of what the Athenian collective mind considered to be desirable patterns of conduct”.<sup>7</sup>

While there is nothing wrong in and of itself with this theory of oratory expressing customary religious discourse, in the sense of widely-prevalent and widely-acceptable, three qualifications should be taken into account. First, ‘popular religion’ is a loaded term and can be rather problematic as a category. Jacques Berlinerblau has demonstrated how different theoretical assumptions underlie the use of a notion of ‘popular religion’, whether this is a supposed correlation between a given group’s religious practice and their social-economic position, or

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<sup>4</sup> Cf. e.g. Dover (1974), 5-6; Ober (1989), 45; Hansen (1999), 25.

<sup>5</sup> Rudhardt (1958), 6; Dover (1974), 5-14, esp. 13; Mikalson (1983), 7-9; Mikalson (2010a); Herman (2006), esp. 310-374.

<sup>6</sup> Mikalson (1983), 12.

<sup>7</sup> Herman (2006), 154.

implies a certain relationship of power between ‘popular’ and another, more dominant, ‘official’ religion.<sup>8</sup> As Berlinerblau explains by way of grammar: “I consistently surround the term *popular religion* with a pair of foreboding quotation marks. These grammatical bodyguards serve as a warning to those who would view this construct as unproblematic and conceptually unambiguous.”<sup>9</sup> Second, it has been shown that as sources for social, economic and political history, oratory needs to be employed with certain caveats in mind.<sup>10</sup> The question of fact and the level of its distortion, together with the understanding of recorded elements as typical or oppositely as abnormal, are not easy questions to answer and are not posed often enough regarding oratory’s religious discourse, as compared to its portrayal of economic and social concepts. Third, and most significantly, while there is broad similarity in the religious views and sentiments expressed in oratory, assuming such a level of consistency as a point of departure means idiosyncratic passages and ideas, while not ignored, mostly do not receive attention on equal level.<sup>11</sup> The significant variety found within the religious discourses of oratory is thereby downplayed. Different from these approaches, this thesis does not aim to provide a synthesis of religion in oratory as a system of belief, as something tangible and coherent, which can be used as an easy mirror for ‘popular’ beliefs in Athens. Rather, it takes the speeches of the orators as constructed, partial and imperfect appropriations by individual agents of a religious system, which, as we shall see, is itself not necessarily coherent.<sup>12</sup>

A second strand of research approaches religion in oratory from a rhetorical perspective, focusing on the form of religious elements and their rhetorical value. Donald King’s 1955 article ‘The appeal to religion in Greek rhetoric’ is an early manifestation of this approach, which

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<sup>8</sup> Berlinerblau (2001), esp. 613, 618-620.

<sup>9</sup> Berlinerblau (2001), 607.

<sup>10</sup> E.g. Todd (1990); Hunt (2010), 8. Cf. Hesk (2000) on the representation of truth and deceit in Athenian oratory.

<sup>11</sup> An example can be drawn from Mikalson (1983), 25-30; discussing divine and human justice he mentions none of the passages which atypically suggest an assignation of divine origin to human laws or customs (Dem.23.70; Antiph. 1.3; Lys. 6.10) other than Dem. 25.16-17, in all likelihood an inauthentic Hellenistic composition. On these passages, see Chapter Five. Another example is the lack of attention to unusual oath-gods invoked in oaths sworn in oratory: see Rudhardt (1958), 204-205; Mikalson (1983), 31-38.

<sup>12</sup> Taking appropriation as defined by de Certeau (1984) and applying it to ancient religion, as Rüpke (2015), esp. 348 does. Cf. Rüpke and Raja (2015).

recognises the way orators employ religious argumentation as rhetorical tools of persuasion. King focuses on religious elements used as emotional appeals to the audience, as arguments which contribute to the impression of the speaker's character, and as proof of the truth of statements made.<sup>13</sup> With a focus narrowly confined to 'appeals to religion', King is not interested in what the orators reveal about fourth-century Athenian religion. Using religious argumentation, King argues, simply "formed part of the customary pattern of rhetorical practice", but he does not examine why or how a speaker in the Assembly or a law court might decide to use religious argumentation, or why this might be persuasive.<sup>14</sup> King usefully categorises types of religious argumentation used by the orators (such as vilification of one's opponent through accusations of impiety, or appeals to precedents established by gods). However, by focusing on form and rhetorical function, he at times causes the speeches' religious elements – such as oaths, oracles and discussions of the divine – to appear as static, formulaic tools of persuasion, as *topoi* largely bereft of historical context, downplaying variety between orators and between genres.<sup>15</sup> More recently, scholars have begun to recognise such differences, however, often in studies of a smaller scope concentrated either on particular orators or singular religious elements. Michael Edwards' 2009 article 'Les dieux chez les orateurs attiques' focuses on addresses to the gods, and recognises, for example, a change in frequency in their usage throughout the fourth century.<sup>16</sup> Other scholars who focus on particular religious elements and their rhetorical employment will be discussed in more detail in the relevant chapters of this thesis, but include, for example, Hannah Willey on divine law or Alan Sommerstein on oaths in oratory.<sup>17</sup> An article by Meinof Vielberg on 'Die religiösen Vorstellungen des Redners Lykurg' (1991) applies this awareness of difference and distinction to Lykourgos' speech *Against Leokrates*, which is remarkable for the quantity and idiosyncratic

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<sup>13</sup> King (1955), 363.

<sup>14</sup> King (1955), 371.

<sup>15</sup> For instance, he chooses examples from epideictic speeches without distinction: King (1955), 364-365.

<sup>16</sup> Edwards (2009), 419-420. Cf. also the introductory article by Pernot (2009) in the same volume, which presents a theoretical discussion of the points of contact between 'religion' and 'rhetoric', categorising types of rhetorical forms of religious expression, such as discourse about the gods and discourses addressed to the gods (for example prayers and hymns), discussing too the religious nature of rhetoric itself.

<sup>17</sup> Willey (2016); Sommerstein (2014a).

quality of its religious ideas and expressions.<sup>18</sup> However, Vielberg uses the orator's oration alongside other biographical information about his life to discern Lykourgos' "personal religiosity" – a problematic research question and focus.<sup>19</sup> By pressing attention on the individual too far in the direction of personal character, the article illustrates the difficulties and methodological problems we encounter when moving towards a more individualised approach in reading texts which belong to the genre of rhetoric.

Another work which trained its focus on the individual orator, and is the most comprehensive contribution to the study of religion in oratory since Meuss' work, is Gunther Martin's recent *Divine Talk: Religious Argumentation in Demosthenes* (2009) – the first full monograph on the subject. Martin sets his aim not to explore popular beliefs which the orators' texts mirror, but "to ask when and why orators use these arguments [based on popular beliefs]. They do not use religion just because it is there, but because it serves their purpose and because it provides them with argumentative material of a kind or quality they do not find elsewhere."<sup>20</sup> Martin looks at how religion is employed by the orators, taking a rhetorical approach, as evidenced by the definition of his subject as 'religious argumentation', not 'religion', 'religious thought' or the like.<sup>21</sup> Martin defines 'religious argumentation' as "the use of references to religious ideas, actions and institutions for the purpose of influencing an audience to vote for the speaker's cause".<sup>22</sup> He is particularly interested in the effect of genre and author on the use of religious argumentation, as he seeks "to establish to what end speakers employ religious references and ideas in specific situations and what restrictions are imposed on them in this respect by the setting of their delivery."<sup>23</sup> He organises his study by genre, examining public forensic speeches, private forensic ones, and deliberative orations. Although he does include Lykourgos'

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<sup>18</sup> Vielberg (1991).

<sup>19</sup> See for example Vielberg (1991), 68: one of the questions Vielberg asks, although he admits the answer must remain open, is "ob sich hinter diesen Fassade von zweckrationalem Pragmatismus ein Kern persönlicher Religiosität verbarg."

<sup>20</sup> Martin (2009), 3.

<sup>21</sup> He defines religious argumentation simply as ideas which draw on religion, "as opposed to 'argumentation free from religion'", though he does recognize the significant grey area between these: Martin (2009), 6.

<sup>22</sup> Martin (2009), 5.

<sup>23</sup> Martin (2009), 4.

*Against Leokrates*, the Lysianic *Against Andocides* and Aeschines' corpus of three orations as comparative material, Martin's focus concentrates on Demosthenes. His approach takes the form of close readings of speeches which analyse the scores of religious elements within these: such as discussions of the gods; references to temples, cults and festivals; as well as religious characterisations, positive (piety and divine favour) and negative (impiety, pollution and perjury), the latter of which range from actual charges of religious offences to vaguer accusations of religious wrong-doing and the use of religious language as insults. He importantly considers the difficulties of isolating casual references to notions which contain a religious element from references where the religious connotations or invocations are primary.<sup>24</sup>

The principal arguments of Martin's book concern the influence of genre and author on religious argumentation. Martin demonstrates there is little religious argumentation in the public speeches that Demosthenes delivered himself, compared to the orations he wrote for others and those written by others. This leads him to argue that using religious argumentation is the norm in public forensic oratory, but Demosthenes chooses not extensively to do so.<sup>25</sup> Secondly, Martin asserts there is relatively little religious argumentation in deliberative oratory.<sup>26</sup> As the only such speeches preserved are from the hand of Demosthenes, he compares this material to Aristophanes' plays and Thucydides' writing and concludes it was the norm for Assembly speeches to display minimal religious content.<sup>27</sup> This conclusion rests on the notion that Thucydides and Aristophanes are reliable and easily-interpretable sources for the role of

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<sup>24</sup> Martin (2009), 5-10.

<sup>25</sup> Martin (2009), 207-215. He does not reach a conclusion about why Demosthenes is economical with religious references, considering whether this may be part of a self-presentation as "pragmatic politician" over "preacher", a lack of religious authority in his personal life, or just a personal preference (215). This exemplifies how Martin at times appears to edge a little too close to the problematic idea of a 'personal religious identity', in his focus on trying to decipher the individual author behind the speeches. His eagerness to attribute differences to the identity of individual speakers also means that he occasionally overstates internal consistency. He claims, for instance: "Lycurgus in his public forensic speeches seems to emphasise frequently the connection between the gods and the polis" (204). However, this statement plays up the very few fragments of Lykourgos' orations we have aside from the speech *Against Leokrates*.

<sup>26</sup> Martin (2009), 290-300.

<sup>27</sup> Martin (2009), 292.

religious discourse in the Assembly, which is however not unquestionable.<sup>28</sup> That Athenians addressing an audience of fellow citizens spoke differently about the divine, its connections to the human world, and human behaviour towards the divine, depending on the setting of their public address is an important point which Martin illustrates through his attention to the differences between genres.

## This study

While recognising the value of Martin's detailed study, this thesis takes a significantly different approach. First, it expands scope of the orators examined, investigating the whole corpus of forensic and deliberative speeches delivered in Athens in the classical period. Of course, certain speeches which contain noticeable religious elements will evidently feature more regularly, which also means certain orators will be more prominent than others. Nonetheless this study aims to be a comprehensive analysis of the available evidence for forensic and deliberative Attic oratory. Second, it differs in its principal aim from Martin's work. While he focuses on religious argumentation, this study analyses not merely how religion was employed in oratory to construct convincing arguments, but how the religious discourse which these speeches contain is itself constructed. Its aim is to explore what the Attic orators said about the gods and their world, and the human experience of negotiating a relationship with the gods, as well as to dissect how these orators were able to advance such claims. This latter point is significant. While Martin's study does some of the groundwork for a serious analysis of religion in oratory, the focus in his conclusions on authorial idiosyncrasies and differences between genres does not explore what this says about the place of religion in society in general, and in political and legal decision-making in particular. For example, Martin recognizes a connection between

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<sup>28</sup> So Trevett (2010). That the evidence of Aristophanes and Thucydides for the workings of the Assembly meetings can be interpreted in different ways is shown, for example, by Bowden (2003), esp. 270-272, who interprets these same sources to argue for a significant role for oracles in Assembly meetings. If one takes this comparative evidence as inconclusive, Martin does not make clear enough why the paucity of religious argumentation in deliberative oratory may not similarly come down to a personal Demosthenic choice, which would fit in with the idiosyncratic explanation he applies to the public speeches too.

religious argumentation and the collective seriousness of speeches, with public trial speeches and others with “heightened significance” containing more references to the divine and more arguments based on religious elements.<sup>29</sup> Yet he does not follow through with this conclusion to examine what this tells us about the nature of religion and its place in Athenian society. This thesis is more interested in examining oratory as a source for the study of Athenian religion, rather than seeing religion purely as a rhetorical tool in oratory.

Furthermore, this thesis differs from the first approach discussed above which focuses on popular religious thought by paying attention to the *construction* of religious discourses. To analyse the varied ways in which religious discourse is shaped in the speeches, it makes use of the notion of ‘religious authority’. As we shall see, studies of Greek religion have concentrated on authority either in its institutional incarnation or as invested in religious ‘experts’ or specialists, such as priests and seers. This emphasis on ‘official’ persons and social positions concerns itself largely with authority’s implementation, neglecting the dynamic process of its construction. It misses how authority revises itself even as it claims continuity. It is not only a question of power (performed), but influence (created). This thesis aims to adjust such analysis and yield a more complex portrait of authority, in order to understand the way in which religious authority is constructed and employed in the speeches which serve as source for the decision-making processes of Athens’ democratic institutions. Taking authority as the performance of an act or speech act which exerts a force on its hearers, based on a particular form of legitimacy, it follows work by the historian of religion Bruce Lincoln, who asserts authority is both a constructed entity and “an aspect of discourse”.<sup>30</sup> As such, this study homes in on *where* religious authority lies, *how* claims of religious authority are constructed and on *which* basis, examining both sources of authority explicitly religious in terms of their origin, such as oracles and dreams, as well as other elements employed to build and challenge religious authority, namely oaths and laws. The theorisation of ‘authority’ stresses the asymmetry in the

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<sup>29</sup> See, for example, Martin (2009), 289, 306.

<sup>30</sup> Lincoln (1994), 2.



relationship between speaker and audience, much more so than ‘persuasion’ does, which is the framework in which religious discourse in oratory has usually been understood. This thesis is therefore concerned not merely with what is said about the divine and how this is used to construct arguments, but how it is possible to say what is said, in the everyday negotiation of the social and political structures which constitute the human world with the sphere of the divine. This thesis contributes to the very modest collection of studies that are wholly devoted to religion in oratory and fills a gap by adopting a new approach to this subject. Ultimately, rather than follow one of the aforementioned approaches, this thesis aims, by contrast, to forge a path between a rhetorical analysis that produces a static portrait of historically contested, dynamic processes and a minimising one that reduces religious diversity into a homogenised social unity.

## Subject

It is necessary to address a number of choices this thesis has made in the delineation of its subject. First, this study situates the orations of the orators in their historical context, interested as it is in what these sources illuminate about the function and role of religious thought in Athenian society. It limits itself thereby to the speeches delivered in the political and legal decision-making settings of the Athenian *demos*, i.e. forensic and deliberative oratory. It does not include epideictic speeches which were largely composed for a reading audience, such as the majority of Isocrates’ oeuvre.<sup>31</sup> The relationship between the texts which we read as Attic oratory and the speeches actually delivered in these original settings of the law courts and Assembly of course requires consideration. The texts publically ‘circulated’ or ‘published’ appear in some cases to be pre-trial drafts; in others they are versions of the speech revised

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<sup>31</sup> The funerary speeches are epideictic in nature too but differ from most other orations in this genre by being composed for public and oral delivery, not a reading audience. As such they fit into the scope of this thesis, though they rarely discuss the religious sources of authority which this thesis concentrates on.

after delivery.<sup>32</sup> While little is conclusively known about the practice of copying these speeches for distribution, orators likely ‘published’ their works as advertisement for their logographic services or their rhetorical prowess, as political pamphlets, or as money-making texts for sale by ‘booksellers’ – in which case this may have been done in the orator’s lifetime or after his death.<sup>33</sup> How this affects the use of the text as a historical document is indeterminable in exact terms; it needs constant remembering and careful consideration in the case of each individual speech, as for example Stephen Todd and Douglas MacDowell insist.<sup>34</sup> A similar issue for preliminary consideration is authorship. More important than whether the orator ascribed as author to a speech is correct is whether the speech was composed in the classical period, and written for the occasion for which it purports to be. We will return to authorship and the significance of forgery in particular with respect to the Demosthenic *Against Aristogeiton* (Dem. 25). The authenticity of documents included as depositions of evidence in the speeches will receive attention too, particularly in Chapter Two, which examines the oracles quoted by litigants in the law courts.

In practice, speeches written for the law courts will be discussed much more frequently than those of the Assembly. This is a consequence both of the relative small number of extant deliberative speeches compared to forensic ones, and of the fact that these latter are simply more often relevant to the topic of this thesis. As Martin demonstrates, Assembly speeches contain less talk of the divine.<sup>35</sup> As this thesis will show, they do not quote oracles or dreams, nor make reference to divine intervention or the notion of divine law. However, we will come back to deliberative oratory in Chapter Four in the discussion of the most common religious reference found in oratory, the oath.

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<sup>32</sup> The paired defence and prosecution speeches of Dem. 19 and Aeschin. 2, and Aeschin. 3 and Dem. 18, evidence post-delivery revision. Cf. Worthington (1991), 56-57.

<sup>33</sup> For consideration of these issues, see especially Trevett (1996). Cf. also Gagarin (1998), xv; Milns (2000), 207-208; and MacDowell (2009), 7-8, who, discussing Demosthenes’ oeuvre, is more cautious about the idea of public distribution during the orator’s lifetime.

<sup>34</sup> Todd (1990), 167; MacDowell (2009), 8.

<sup>35</sup> Martin (2009), 290-300.

This thesis cannot be exhaustive in its coverage, considering the size of both the topic and the corpus of source material. *Miasma* (pollution) and *asebeia* (impiety) are two issues in particular which connect religion and law and have never been short of attention; they will not be focused on in this thesis, though the ensuing chapters will touch upon them. The importance of *miasma* and the notion of pollution for the way homicide is understood has been demonstrated expertly by Robert Parker's *Miasma* and recently re-investigated by Andrej and Ivana Petrovic in their *Inner Purity and Pollution in Greek Religion* (2016).<sup>36</sup> The notion of *asebeia* too has been the subject of intense investigation. Only a few orations in the corpus of Attic oratory are prosecution or defence speeches of trials where the charge is a religious one: Lysias' *On the Olive Stump* deals with the charge of cutting down a sacred olive tree, considered an act of *asebeia*, while Andocides' *On the Mysteries* and the prosecution's pseudo-Lysianic *Against Andocides* deal with *asebeia* too.<sup>37</sup> Andocides was accused of impiety for his complicity in the profanation of the Mysteries (περὶ τῶν μυστηρίων ὡς οὐτ' ἐμοὶ ἡσέβηται: Andoc. 1.10) and mutilation of the Herms (Andoc. 1.34), affairs of religious controversy which agitated Athens in 415 BCE and continued to flare up occasionally afterwards. These speeches are of course particularly relevant to the subject of this thesis and its investigation of religion in oratory. Readers of both speeches have been principally preoccupied with these orations' depiction, definition and exploration of the concept of *asebeia*. As the most explicit charge of religious wrongdoing known in Attic law, and also as the charge linked to Socrates' famous trial, *asebeia* has long been the focal point for analyses of the relationship between religion and law, and religious divergence and authority, in classical Greece.<sup>38</sup>

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<sup>36</sup> Parker (1983); Petrovic and Petrovic (2016). Cf. Harris (2015b).

<sup>37</sup> More speeches evidence a litigant making accusations against his opponent of religious wrongdoing but these often do not constitute the actual charge (e.g. Dem. 21; Lyc. 1, Aeschin.3). On *hierosylia* (theft of sacred property), see Isoc. 20.6; Lyc. 1.65; cf. Todd (1993), 107, 110. *Hierosylia* could also however be charged as *asebeia*: cf. Gagarin (2013), 72. References to other impiety trials also appear in Dem. 59.116-117 (Archias) and Lys. 6.17 (Diagoras of Melos): cf. Bowden (2015), 326. On the particular connection between impiety and the Mysteries at Eleusis, which this evidence suggests, see Gagné (2009), esp. 217-223.

<sup>38</sup> Socrates' trial is the only known one definitely resulting from a *graphe asebeias*: cf. Bowden (2015), 326. It has led to particular focus on the connection between impiety and atheism: see Whitmarsh (2016). The charge levied against Socrates of οὐ νομίζειν τοὺς θεοὺς, and its relation to belief, raises the question whether impiety could only be applied to actions and ritual transgressions, or thoughts and beliefs too. On two opposing views regarding Socrates' charge and belief see Versnel (2011), 539-559 and Giordano-Zecharya (2005). Plato's discussion of impiety in Book 10

Scholars of a culture which does not, as is well-known, possess a definite term for religion, and who have also had to abandon clear notions such as a sacred/profane demarcation, or the concept of ‘sacred law’, have been understandably eager to concern themselves with impiety, a notion which can at least be called emic, in its manifestation as *asebeia*, even if this does not mean ancient definitions of the concept are necessarily clear, compatible or comprehensive.<sup>39</sup> Traditionally, *asebeia* has been understood as a tool for the regulation of religious activities, and more specifically repression of activities which fall outside the boundaries of society’s accepted norms.<sup>40</sup> It is an *adikia*, an offence, which could be prosecuted using a number of different procedures, the foremost being the *graphe asebeias*. Debate has often arisen regarding the motivation behind allegations of impiety, often taken to be only partly religious, as the political often plays an important role too: *asebeia*, it has been argued, made a particularly useful smokescreen for personal or political attacks due to its undefined nature.<sup>41</sup> Recent work has moved away, however, from reading impiety in a narrow, legalistic manner, by awarding more attention to other, previously marginalised sources, and through this also highlighting lesser-noticed dimensions of *asebeia*.<sup>42</sup> Aurian Delli Pizzi, for example, advocates for a reading of impiety “not exclusively in a legal perspective, but also in the framework of social control”.<sup>43</sup>

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of the *Laws* also connects impiety to notions of atheism or non-believing: of being *atheos*, or μή νομίζοντι θεοὺς (*Laws* 10.907d-909d). However, other ancient definitions of impiety present it differently: for references and discussion, see Bowden (2015), 327-329.

<sup>39</sup> The assertion of Kindt (2012), 117 that “the ancient Greek conception of *asebeia* used in this and other similar contexts seems to have been as vague as the ancient Greek conception of religion itself” is an exaggeration and exactly *not* the case: it may not be strictly defined theologically but remains a concept.

<sup>40</sup> E.g. Parker (1996), 207-218; Mikalson (1983), 91-93; Eidinow (2010); Filonik (2013), 80; Haake (2016).

<sup>41</sup> On the intertwining of the political and religious, Parker (1996), 202 goes far: “it may be that an accusation of impiety was almost never brought before an Athenian court without political anxiety or hatred being present in the background”. Also emphasising strong political element in *asebeia* cases: Filonik (2013), 58-60; Kindt (2012), 117-118; Mikalson (1983), 92.

<sup>42</sup> Aurian Delli Pizzi, for example, criticises the focus on the legal context in which impiety is usually understood, as if it is an offence only punishable (and therefore even only existing) through prosecution in a law court: Delli Pizzi (2011), 60. He shows impiety exists outside the law courts through his examination of inscriptions of preventative laws, which discuss specific actions which designate someone as impious (either as ‘being in a state of impiety’ or having committed an impiety: see 63-69), as well as the consequences of this. See also Filonik (2013), esp. 33-52, for a reappraisal of the evidence for impiety trials, questioning the usefulness of later testimonies for our understanding of impiety in the classical period.

<sup>43</sup> Delli Pizzi (2009), 69.

Hugh Bowden develops this further into suggesting impiety is less an offence with which one could be charged, but a condition into which one could fall, as a result of disturbing relationships both with the gods or within one's own community.<sup>44</sup> This thesis does not attempt to add to this already towering mountain of scholarship on the definition of *asebeia* itself. Rather, it seeks to analyse some aspects of the 'impiety speeches' *On the Mysteries* and *Against Andocides* which have received less attention: the use of oaths, the use of evidence, and the way sources of authority, both divine and legal, are portrayed.

Examinations of the role of religion in classical Athenian society frequently focus on two particular aspects: religious innovation and control. Control is very much a judicial and punitive issue, centred on who punishes whom – in which the religious offence discussed above, *asebeia*, in particular takes centre stage. The question of religious innovation, on the other hand, is a chronological one: it is concerned with building a diachronic picture of what changes and who allows change to take place. Recent scholarship has questioned the old-fashioned idea of a religious decline in the fourth century, though of course change can still be detected – for example in the way in which religious regulations are inscribed, or the growing presence of deified abstractions throughout the fourth century to name but two concrete examples.<sup>45</sup> Taking into account the changing political and religious context, the aim of this study is to complement research on the important issues of innovation or control by offering a new perspective on the question of stability: how are religious discourses, ideas and practices, *maintained*? How are they expressed in a public setting, and thereby simultaneously constructed and sustained?

## Approach

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<sup>44</sup> Bowden (2015), 329-336.

<sup>45</sup> See e.g. Parker (1996), 227-237 on deified abstractions; Lambert (2005) on changes in the epigraphic record; Mikalson (1998), 11-45 on the late fourth century; Humphreys (2004), 92 on changes in the Lykourgan period, such as the focus away from the traditional cults connected to the Acropolis.

Scholarship on Greek religion has in recent years congregated around the polis religion model, whether to propagate it or critique it. ‘Polis religion’ as a term was most famously conceptualized by Christiane Sourvinou-Inwood, as an articulation of the reciprocal interconnectedness of religion and the polis in the ancient Greek world: “The role of the polis in the articulation of Greek religion was matched by the role of religion in the articulation of the polis: religion provided the framework and the symbolic focus of the polis.”<sup>46</sup> Sourvinou-Inwood argued for the centrality of the polis as an organising and controlling system which regulates religious activity, interacting both with individuals as well as with a Panhellenic religious system and the systems of other *poleis*.<sup>47</sup> ‘Polis religion’ has since been used as an approach or a model in a variety of ways by different scholars.<sup>48</sup> It has recently also spawned an increasing number of critiques, which have extensively problematized and criticised, as well as revised the model. Scholars such as Jan Bremmer, Esther Eidinow, Julia Kindt and Jörg Rüpke have scrutinised the model’s geographical bias and a-historical stance (both of which encourage a focus on classical Athens), alongside its insufficient recognition of the role of individuals and of the plurality of religious discourses.<sup>49</sup> This last point is usually made by critics to advocate for the inclusion of religious practices which do not fit easily into the ‘official’ polis-religion model and are therefore – erroneously – stamped as marginal, such as magic practices or Orphism.<sup>50</sup> Some of the critiques find fault less with the original theory of Sourvinou-Inwood than with a more extreme imagination of it, as Robert Parker and Thomas Harrison have suggested.<sup>51</sup> Nonetheless, these critiques raise awareness of the complexity of the way in which Greek religion functioned: Julia Kindt, for instance, argues the polis religion approach simplifies

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<sup>46</sup> Sourvinou-Inwood (2000a), 37; originally Sourvinou-Inwood (1990), 322.

<sup>47</sup> Sourvinou-Inwood (2000a); (2000b). Despite her recognition and discussion of the individual as the “basic cult unit in polis religion” (2000b, 47), she is often criticised for not paying enough attention to the individual (experience?) of Greek religion.

<sup>48</sup> E.g. Price (1999); Parker (2005a); Pirenne Delforge and Pironti (2015).

<sup>49</sup> Bremmer (2010); Eidinow (2011); Eidinow (2015); Kindt (2012); Rüpke (2012).

<sup>50</sup> See Kindt (2012); Eidinow (2007) on magic and curse tablets; Scott (2010) on Delphi; Bremmer (2010) on Orphism. For a critique of the unfair consideration of such practices as marginal (and the Christianising assumptions underlying such a distinction), see Bremmer (2010), 22–29.

<sup>51</sup> Harrison (2015), 166–168; Parker (2011), 58–61 who defends Sourvinou-Inwood’s recognition of the role of individuals and sub-groups within the polis. Cf. also the review of Kindt (2012) in Pirenne-Delforge (forthcoming).

the “manifold ways in which religious symbols shape and are shaped by society”.<sup>52</sup> Yet these critiques do not so much cast out, as rather add to, the recognition of the centrality and authority of the polis, which the polis religion model propagates. In their focus on those aspects of Greek religion which have recently come into vogue – such as a move away from cult as the (sole) focus of Greek religion and a concomitant return to religious discourses and the notion of belief – these recent critiques add other lenses alongside the polis through which Greek religion can be studied.<sup>53</sup>

Esther Eidinow, for example, has recently advocated the use of a model for ancient Greek religion based on network theory, aimed at providing a more nuanced picture of how the different nodes constituting Greek religion vary and interact. It converges with other critiques of polis religion in its attention to elements which appear sidelined in the polis religion model, such as ‘marginal’ practices, elective cult affiliations, and itinerant religious specialists.<sup>54</sup> However, Eidinow’s network theory model is more ambitious, allowing for a reconfiguration of how religion itself is constituted in ancient Greece:

Whereas previous models of embedded religion evoked this very powerful idea (in a variety of different ways) as dependent on social groups within the *polis*, in contrast, a networked version of embedded religion focuses on relational ties between individuals and between individuals and groups. Consideration of the conceptual as well as physical/social networks draws our attention to the dynamic cognitive processes, both group and individual, involved in the creation of the concepts and practices of ancient Greek religion. Thus, a networked model of ancient Greek religion suggests that it was by means of individual relationships, consisting of stories, narratives and other forms of discursive communication, that ancient Greek religious culture was both experienced and manipulated, transmitted and shaped by those involved.<sup>55</sup>

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<sup>52</sup> Kindt (2012), 13.

<sup>53</sup> On belief see below.

<sup>54</sup> Eidinow (2011); (2015a); (2015b).

<sup>55</sup> Eidinow (2015b), 61-62. On the notion of embeddedness, see discussion in Chapter One.

An illustration of this “conceptual networking” can be found in Eidinow’s discussion of *asebeia* in forensic speeches. This notion of impiety and particularly its under-specification and vagueness is interpreted in the polis religion model as a mechanism of the polis “to legitimate and mediate religious activity”, as Robert Parker put it: “the polis, by allowing prosecutions for an undefined crime of impiety, claimed a right of control over all religious activities that occurred on its territory”.<sup>56</sup> This interpretation however downplays the nature of all Greek law as ‘under-specified’.<sup>57</sup> Eidinow, by contrast, highlights the role of speakers in the law courts as participating in the co-creation of the concept of *asebeia* by drawing “on shared ideas of *asebeia*, consolidating and developing its meanings.”<sup>58</sup> Eidinow therefore highlights an aspect important for our understanding of Greek religion which is rather minimised by the polis religion approach, namely the construction of discourse.

As accounts of the decision-making processes associated with the polis’ central democratic institutions, the speeches delivered to the *demos* in the Athenian Assembly or in the city’s law courts could be regarded as prime expressions of the collective religion of the ‘polis religion’ model, ‘regulated’ by the city-state and its institutions. The traditional treatment of Attic oratory as a cohesive corpus expressing popular religious views, discussed above, fits in neatly then with the idea of polis religion. However, questioning this cohesiveness, as this thesis aims to do, raises potential objections too to the usefulness of polis religion as a model to understand the religious discourse of the orators. While most critiques of polis religion focus on the marginalization of sub-groups such as the *oikos*, *phratries*, or religious associations, and on non-Athenian religious practices, there has been less interest in re-examining the usefulness of the polis religion model also for what one might call ‘canonical’ sources for Greek religion – specifically Athenian religion – such as the speeches of the orators.<sup>59</sup> This thesis argues for the necessity for such a re-examination. Through a thorough reassessment of the religious

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<sup>56</sup> Parker (2011), 60-61.

<sup>57</sup> On the nature of law see Chapter Five.

<sup>58</sup> Eidinow (2015a), 77-78.

<sup>59</sup> While I occasionally use “Greek” as a descriptive adjective, my focus is firmly on Athens.



discourses found in oratory, it thereby contributes to the recent reconsiderations of the polis religion model.

Offering an examination of *how* religious discourses in the speeches are constructed, this thesis pays particular attention to the variety within and to the agency through which religious discourse came to be expressed. Eidinow has shown how placing the polis so central in one's conception of Greek religion results in a dichotomy between 'polis' and 'subjects of polis regulation', which "awards too little attention to the role played by these so-called subjects".<sup>60</sup> This thesis takes this observation a step further by arguing that not only these 'subjects of the polis' but also the 'polis' itself needs to be de-constructed and individualized. The polis through the *demos* exerts control over many aspects of the religious life of Athenians, but to understand this one needs to deconstruct those who in this configuration *are* the 'polis', i.e. those publically addressing and constructing popular discourse. This study contends the notion of 'polis' also downplays the constructed-and-contested nature of a 'polis discourse' on religion. As such, it aims to explore the mechanics of how the civic discourse of oratory was constructed.<sup>61</sup> In other words, this investigation highlights the unstable categories, multiple strategies and creative adaptations operative in the Attic orators' individual speeches concerning religion. By making use of the concept of religious authority, examining the ways in which religious authority is assigned to various sources, how the orators themselves employ religious authority, and how the authority of the divine and human law relate, this study aims to contribute to the recognition of classical Athenian religion as not merely *ta dromena* (things done), or even *ta legomena* (things said) but also things constructed.

This leads us to the question of definitions and what this thesis means when it talks of 'religion', 'authority', and 'oratory'. Chapter One considers the definitions of and relationship between

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<sup>60</sup> Eidinow (2015a), 64.

<sup>61</sup> In its focus on authority, this thesis fits in with recent work on 'sacred law': cf. Mikalson (2016); Pirenne Delforge and Carbon (2017); Chaniotis (2009). However, while these studies focus on cult, and therefore ritual action, this thesis examines religious discourse.

the latter two terms, whilst this introduction will now deal with the concept of religion. Ancient Greek, it is well-known, has no word akin to the modern concept of religion.<sup>62</sup> The gods, *oi theoi*, stood central in the conception of anything other-worldly, whose concerns and actions could also be described as *ta theia*, ‘the divine things’. In everyday life elements connected to the gods were *ta hiera*, which can be understood as “objects and things which are part of a transactional relationship between gods and humans”, as Emily Kearns glosses.<sup>63</sup> Together with *ta hosia* – its counterpart but not its opposite – it conceptualizes, from a human perspective, divine and human matters and the relationship between the two.<sup>64</sup> Terms such as *ta hiera* may have nearly sufficed as descriptors for Greek religion, in the cultic and ritual perspective which dominated the study of Greek religion in the 1980s and 1990s.<sup>65</sup> Recently, however, a cognitive turn has resulted in a renewed interest in the religious world-view and religious mentalities of the ancient world. This is simultaneously illustrated and expressed by the re-appearance of terms such as ‘belief’ and even ‘theology’ in studies of Greek religion, as scholars have come to argue that ritual and the social function of cult cannot in itself provide a complete picture of how we might attempt to understand how the ancient Greeks imagined their gods and their effects on the human world.<sup>66</sup> As current scholarship has started to proceed from the debate of whether belief is a valid concept for ancient religion to the actual investigation of such beliefs and theologies and how these might be constructively engaged with and analysed, much attention has been paid to the plurality and multiplicity of beliefs and their resulting conceptualisations of the gods.<sup>67</sup> The incoherence and unknowability of the Greek polytheistic divine order and the resultant inconsistencies, paradoxes and pluralities of its religious system is what

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<sup>62</sup> As long recognised: see discussion of the scholarship in Buxton (2000), 8-9.

<sup>63</sup> Kearns (1995), 512-513. On explicit and programmatic statements about ‘religion’ in ancient Greek sources as largely exceptional, and therefore not necessarily a good base for a definition of Greek religion, see Kearns (1995), 511.

<sup>64</sup> As Josine Blok writes. On *hiera kai hosia* and its definitions see Blok (2014); Blok (2017).

<sup>65</sup> See Price (1985); more recently Evans (2010). Parker (2011), 15 describes Greek religion as untheological, on the basis of its divine unknowability.

<sup>66</sup> On belief, see Versnel (2011), esp. 539-560 and Harrison (2015). On theology, see the new *Theologies of Ancient Greek Religion*, especially the introduction by the authors: Eidinow, Kindt, Osborne, Tor (2016). Cf. also Petrovic and Petrovic (2016).

<sup>67</sup> Harrison (2015), 174 in particular has argued for more sustained engagement with belief rather than mere acknowledgement of its presence.

constitutes the “complex and kaleidoscopic religious reality” of the Greeks, as Henk Versnel puts it.<sup>68</sup> This thesis aligns with this widening perspective by focusing on what can be said about the gods in fourth-century Athens and how this can be said in a public setting. It fits in with the view of thought and action, or belief and ritual, not as dichotomies, but as constitutive of each other: as Zsuzsanna Varhelyi writes regarding the relationship between belief and action in her study of religion in the Roman Empire, it is necessary to combine “the potentially lived aspects” as well as “the social constructs that lie beneath them”, in “investigating historical experiences” of religion in the ancient world.<sup>69</sup>

This thesis therefore understands religion in a broad sense, going beyond merely cult and practice. While the feasibility of and need for a universal, general definition of religion itself has been questioned on the grounds that such a definition as a “historical product of discursive processes” will always be analytically incompatible with ‘religions’ found in particular places and times, nonetheless a definition of religion – even if not *the* definition – can be useful as a starting point for an enquiry into a religion found in a specific time and place, such as that of classical Greece.<sup>70</sup> In his research aimed at introducing a view of the individual into the understanding of ancient religion as a collective enterprise, Jörg Rüpke suggests such a definition, taking religion as:

the temporary and situational enlargement of the environment – judged as relevant by one or several of the actors – beyond the unquestionably plausible social environment inhabited by co-existing humans who are in communication (and hence observable).<sup>71</sup>

This definition builds upon the recognition of religion’s nature as a set of ordinary discourses and practices, though “characterised by an orientation to speak of matters transcendent”.<sup>72</sup> The attribution of agency to deities, spirits or otherworldly phenomena, to “something beyond the unquestionably plausible”, stands central here in this stripped-back blueprint, as does the

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<sup>68</sup> Versnel (2011), 10.

<sup>69</sup> Varhelyi (2010), 12.

<sup>70</sup> Asad (1993), 29. Cf. Berlinerblau (2001), 608.

<sup>71</sup> Rüpke (2015), 348.

<sup>72</sup> Braun (2000), 10.

practice of communication with such agents.<sup>73</sup> As this thesis is focused in particular on the construction of religious authority in oratory, the notions of divine agency, the expression of divine will, and the tools used to divine both, will be important. This definition usefully recognises the cognitive dimension of religion and emphasises the multifarious and constructed nature of religious conceptualisations, which helps us understand the way in which ancient Greeks imagined their gods and their world. This thesis therefore conceptualises ‘religion’ in ancient Athens not as a set of static beliefs about the gods, but rather as varied appropriations of religious ideas and notions and practices by individuals, within a specific social context, in a particular space and time.

## **Structure**

The structure of this thesis is thematic. The first of five chapters establishes the methodological framework, concerned with the concept of religious authority. It argues for an understanding of authority based on sociological theorisation, which differentiates it from power on the one hand, and from persuasion on the other, allowing for a reading of authority as an attribute, or disposition, both dynamic and discursive in nature. It contends such a concept of authority can usefully be applied to the reading of oratory as a genre. Secondly, in its focus on specifically religious discourse, the chapter sets out how the concept of authority is also a helpful tool for the analysis of religion in classical Athens. Examining the different sites which hold religious authority, it homes in on the construction of such authority, and the sources used to this effect. Oratory can serve as evidence for the construction of religious authority in classical Athens, demonstrating both how sources of religious authority can be deployed in public speech and how religious authority functions with regard to other authorities. Where do sources of religious authority come from? How does the process of their quotation in a litigant’s defence or prosecution speech work? Where does interpretation or application fit into this process, and what is the role of the speaker himself? The chapter holds that to understand the religious

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<sup>73</sup> Rüpke (2015), 348.

discourse of oratory, it is necessary to examine not only the persuasive effect of the employment of religious discourse, but also its origin and the process by which it comes to be employed.

The remaining four chapters apply this framework to the speeches of the Attic orators by analysing the different types of sources of religious authority identifiable in the speeches. This approach means the chapters are rather episodic and that certain speeches will come into discussion in multiple chapters, though hopefully without creating too much of a disjointed effect. Chapters Two and Three deal first with sources of authority which are explicitly religious in terms of their origin. As the only “anchoring” in Greek religion, signs derived from divinatory practices, such as oracles and dreams, are the most direct evidence for divine will.<sup>74</sup> Chapter Two addresses oracles. It examines the quotation, re-appropriation and re-use of responses from the oracular sanctuaries of Apollo at Delphi and Zeus at Dodona. It investigates the different ways authors use oracles, and explores how this could be done, how oracles were collected and stored which would allow for their re-quotation in litigants’ speeches as depositions of evidence or narrative stories. The six speeches which discuss oracles do so in distinct ways: while some are presented as written depositions of evidence, others are part of the speaker’s narrative. This chapter will demonstrate how this difference in presentation and format also results in a difference in the way they are presented as authoritative – either as divine signs, or as sources of authority more similar to laws. The chapter thereby contributes to the analysis of divination not in terms of its factual authenticity or the historical workings of consultation procedures, but in terms of divination’s narrative power as ‘oracle stories’.<sup>75</sup>

The third chapter focuses on dreams. It revolves around a single vision, as it presents an in-depth analysis of Hyperides’ *In Defence of Euxenippus*, the only oration preserved from classical

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<sup>74</sup> Sourvinou-Inwood (2000), 20.

<sup>75</sup> As recently exemplified, for example, by Kindt (2016).

Athens which discusses an occasion of oracular divination by way of a dream.<sup>76</sup> It serves as a case study, albeit an unusual one, for the use of divine signs in legal and political decision-making in fourth-century Athens. The chapter disassembles the process of oracular consultation, from decision to consult the oracle, through the functioning of the divinatory consultation itself and the subsequent interpretation of the sign, to the final resolution of the problem. Paying particular attention to the identity of those involved in the divinatory consultation and the potential for contestation of the interpretation of a divine dream, the chapter sets out how religious authority in the decision-making process exists on different levels.

Chapters Four and Five examine elements employed in other ways to construct and challenge religious authority. Chapter Four explores oaths – the most common religious element found in the speeches of the orators. The oath is a mechanism which brings the gods in, both literally, by naming them, as well as more abstractedly, assigning them a role with regard to the statement made by the swearer of the oath. The chapter undertakes to explore what it means to swear an oath by looking both at the short informal oaths frequently found in most speeches, as well as the few occasions in which litigants choose to swear a free, formal oath in their addresses. By casting the gods as guarantors of the truth of statements of intention, which cannot be proven by any physical means, a speaker awards a higher, divine authority to a statement. This chapter questions the dismissive treatment which oaths in oratory often receive in modern scholarship by arguing these oaths are not merely rhetorical tools of persuasion or casual interjections completely disconnected from their original function as a mechanism which makes binding an assertion, a denial or a promise. Rather, oaths are consequential performative speech acts considered efficacious, if risky, in nature.

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<sup>76</sup> The only other references to dreams of any kind in Attic oratory are a tale of Helen visiting Homer in a dream in Isocrates' *Helen* (Isoc. 10.65) and two accusations against Demosthenes by Aeschines: Aesch. 2.10 alleges Demosthenes in his prosecution speech had told a story about a dream of a priestess in Sicily, although this is not preserved in Demosthenes' *On the False Embassy*. In the second accusation Aeschines accuses Demosthenes of pretending, upon hearing the news of Philip's death, to receive this news directly from Athena and Zeus in a dream (Aesch. 3.77, 219).

The final chapter examines the conceptualisation of the law in oratory with respect to religion. Law is mostly portrayed as a source of authority decidedly human in origin, and in many respects appears distinct from divine authority. Yet certain speeches suggest a closer involvement of the divine in the origin of law. This chapter will analyse the way the authority of law functions together with the religious beliefs and actions of the Athenians of the fourth century, by first examining the different portrayals of divine involvement in the construction of law before looking at divine involvement in the enforcement of law. It examines the mechanisms used to connect the divine and *nomos*, and scrutinises how the nature of Greek religious discourses allows for the authority of the law and the authority of the gods to function in harmony.

Finally, the conclusion will demonstrate how the orators' construction of religious authority and its assignation to different types of sources operates alongside the unknowability of the gods and the nature of Greek religion, to create a discourse which is diverse and flexible, adapting tradition to changing historical situations and concerns.

## Chapter One: Authority

In his speech *Against Leokrates*, Lykourgos tells of the fate of Kallistratos, the Athenian general who was condemned to death for treason in 361 BC and, defying his punishment, fled Athens. As Lykourgos recounts:

later, hearing from the god at Delphi that if he returned to Athens he would receive treatment according to the laws (τεύξεται τῶν νόμων), he came back and taking refuge at the altar of the twelve gods (ἐπὶ τὸν βωμὸν τῶν δώδεκα θεῶν καταφυγόντα) was nonetheless put to death by the city (ὑπὸ τῆς πόλεως), and rightly so, for treatment according to the laws is, in the case of wrongdoers, punishment (Lyc. 93).

Having first flouted the judgement of the city, Kallistratos sought out a sign of divine will, which encouraged a path of action heeding the laws. His interpretation of this sign made him return to Athens and subsequently take refuge at an altar in the middle of the Agora. Ignoring the protection afforded by the altar of the twelve gods and Kallistratos' request, the Athenians put Kallistratos to death, thus administering the punishment they had seen fit for the treasonous general all along. That the story should be taken as a paradigm not only for the moral justice of the gods but also for the way they make use of human action to administer this justice of theirs is what Lykourgos contends in his denouement of the tale: "And thus the god (ὁ θεός) too acted rightly in allowing those who had been wronged to punish the offender" (93). The abstraction of the agent who "puts Kallistratos to death" – it is simply said to be the city (πόλις), not even its people (the δῆμος) – reinforces Lykourgos' suggestion that the divine was the real executor of this outcome. Of course, one may wonder whether in fact the existence of this story to begin with – a well-known one, according to Lykourgos (1.93) – points rather to a mechanism quite opposite from the one Lykourgos wishes to convey to his audience: the convenient use of an oracle story as justification for a human action, the execution of Kallistratos.<sup>77</sup> Yet while

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<sup>77</sup> Kindt (2016) has shown that oracle stories are a particular form of narrative which should be treated as *narratives*: they change with every retelling and recontextualisation. For a full analysis of the Kallistratos oracle, see Chapter Two of this thesis.



Lykourgos draws from it the conclusion that divine will and human laws work hand in hand, the story in fact illuminates the intricacy of decision-making processes, both the one portrayed in the story itself, with which Kallistratos is supposedly faced, as well as the actual legal decision-making process of the treason trial, as part of which Lykourgos recounts the oracle story in the first place.<sup>78</sup> Both the oracle story itself – and the discourses of justification built around it – are made complex by the fact that there are numerous entities which have the potential authority to influence the outcome of these decision-making processes: not only the *demos* and the gods but also the *demos*' laws, the gods' unwritten ones, the god's oracular message, and the human interpretation of this.

This thesis is concerned with the place of religion in classical Athenian society, and concentrates specifically on the religious discourses found in the speeches of the Attic orators. To do so, this thesis argues for a focus on the concept of authority. It contends that an understanding of authority based on sociological theorisation – more specifically, one which differentiates authority from power and force, on the one hand, and from persuasion, on the other – allows for a reading of authority as an attribute, or disposition, which is dynamic and discursive in nature and which is characterised by a constant process of construction and (potential) contestation.<sup>79</sup> The relevance of such a concept of authority for this thesis is twofold. Firstly, it provides good analytical purchase on how one should read oratory as a genre. Taking the orations performed in the Athenian Assembly and the law courts not only as a genre of

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<sup>78</sup> The portrayal of conflicting authorities becomes even more complicated at the end of the speech, where Lykourgos returns to the theme of supplication, this time urging respect for its rules. He presents Athens itself as suppliant, “its trees and harbours and temples supplicating you”, thereby casting the judges for a moment in the role of *supplicandus*, usually reserved for gods: Lyc. 1.150. Cf. Naiden (2006), 197.

<sup>79</sup> The usefulness of a more sociological approach to authority and power to the study of the ancient world, and ancient religion in particular, has been demonstrated by some recent works focused on a Roman context: Zsuzsanna Varhelyi's *The Religion of Senators in the Roman Empire: Power and the Beyond* (2010), focuses on the connection between religion and power in the religion of senators in the early Empire. She looks at “how religious authority is claimed and used in religious ideas and practices as evidenced by senators themselves”: see especially 6-12. Michèle Lowrie in her *Writing, Performance, and Authority in Augustan Rome* (2009), 283-294 takes a discursive approach to both authority (*auctoritas*) and performative discourse. Cf. also Dale Launderville's *Piety and Politics: The Dynamics of Royal Authority in Homeric Greece, Biblical Israel, and Old Babylonian Mesopotamia* (2003), 45 on the importance of distinguishing between authority and power, though he defines the concepts differently.

speech which is persuasive in nature, but which also displays authoritative characteristics, thereby paying attention to the authorizing nature of the context in which speeches were delivered, helps us understand how one should interpret them. Secondly, the concept of authority is a helpful tool for the analysis of the religious ideas and thoughts expressed in oratory, the subject of this study, which will therefore home in on one type of authority in particular, namely religious. It will argue that in order to understand the religious elements found in oratory, it is necessary to examine the construction of their authority. Where do sources of religious authority come from? How does the process of their quotation in a litigant's defence or prosecution speech work? Where does interpretation or application fit into this process, and what is the role of the speaker himself? Additionally, how does the authority of other types of evidence, such as laws, function in relation to religious authority? Previous scholarship has most often approached the religious elements in oratory as tools of persuasion, thereby focusing attention primarily on the *effect* of these elements – on their reception by the speech's audience. This chapter shall argue that it is necessary to examine too the other side of the coin: not only the persuasive effect of the employment of religious discourse but also its origin and the process by which it comes to be employed. The analysis of the authority assigned to, and constructed through, religious elements will therefore contribute to a fuller understanding of the role of religion in oratory.

By focusing on specifically religious authority, it will be possible to deconstruct episodes such as the oracle story above more exactly. In Leokrates' trial for treason, Lykourgos adds to his rhetoric-laden speech a paradigmatic story of an oracle. In Lykourgos' narration, Kallistratos made a choice in consulting the oracle, interpreting it in a particular way and following its advice, while the *demos* chose to adhere to the prescription of its own laws over the rules of *ἄστυλία*, divinely prescribed (even if, according to Lykourgos, these laws turn out to be authoritative not in and of themselves, but as tools of a higher authority, namely that of the gods). The story and its quotation in a prosecution speech illustrate the potential for conflict between different sources of authority and raise questions regarding the relation between these, which can be a discordant jostling for dominance, a harmonious working together, or

anything in between. Stories such as the one above also reveal that the notion of conflicting authorities was a real concern of the Greeks, not simply a theoretical or philosophical contradiction removed from reality, as Angelos Chaniotis has astutely shown in an article which presents supplication stories, including Kallistratos', as a case study for the conflict between different authorities.<sup>80</sup> This thesis dissects these decision-making processes and thereby also the arguments upon which such decisions are based. In particular, it examines how litigants in the law courts or speakers in the Assembly construct and use religious discourses, and what this reveals about the place of religion in the city's legal and political decision-making processes, scrutinising how the orators can say what they do about the divine, its relation to the mortal sphere, and the human experience of negotiating this relationship.

This chapter will start with an attempt to define what authority is: how can we examine what the ancients mean by authority and what do we mean when we talk about authority? This general discussion will lead to the specific: to understand the religious language, categories and elements in the speeches, one needs to understand the speeches themselves, and religion itself. First, how does the genre of oratory relate to authoritative discourse? How can the orators say what they do and what is the relationship between speaker and audience? Secondly, it will move on to religious authority, in order to show how this notion of authority can be a useful concept to talk about religion in ancient Greece. To do so, it will first be necessary to look briefly at the constitution of authority in Greek religion more broadly. Studies of religious authority in ancient Greece focus largely either on institutions or on the roles of religious specialists – this chapter will argue that a deeper engagement with authority as a discourse, with its process of *construction*, can decipher more precisely how religious authority functions in ancient Greece. It argues that oratory can be read as a site of this construction of religious authority. As such, oratory is both a source for the understanding of the nature of religious authority in antiquity, and itself a source of potentially authoritative speech operative in classical Athens.

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<sup>80</sup> Chaniotis (1996), 69.

## 1.1 Theories of authority

Stepping out on the search for authority in Ancient Greece, numerous paths appear as potential leads. The modern term authority finds its origins in Latin and attempts at defining the notion often start off from Rome – though of course the relationship between *auctoritas* and authority is only an etymological, not a synonymous, one.<sup>81</sup> The debate which the only-partial overlap in meaning of the two terms has generated, has been addressed recently from both perspectives: by Bruce Lincoln from the point of view of authority, and by Federico Santangelo with *auctoritas* as starting point. Santangelo traces the term back to the agent noun *auctor* and focuses on the part of *auctoritas*' semantic remit which is political in sense, characterising it as an opinion which takes precedence.<sup>82</sup> However, that it is not so straightforward to trace *auctoritas* further back, to ancient Greece, was already remarked upon in the second century CE by Cassius Dio, who stated the Latin *auctoritas* cannot be translated easily into Greek (Dio Cass. 55.3.4-5).<sup>83</sup> There were of course a range of words employed in ancient Greece to conceptualise socio-political relations which concern issues of power and sovereignty, and potentially authority, in varying forms and carrying different emphases and the lack of a singular word to express a concept must not be taken as evidence of a lack of the concept. We will return to possible expressions of authority in the Greek world shortly; however, it will first be necessary to define the concept by examining briefly its development in twentieth-century sociological thought. The aim of this is not to develop a singular and authoritative definition which can be transported and applied to ancient Greece and its religion. This would be not only unwarranted and anachronistic, but it would also suggest there is only one way to understand 'authority', which is not the case. Rather, the point is to define an abstract notion which can serve as an analytical

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<sup>81</sup> Especially the Roman Republic's Senate, whose *auctoritas* Cicero placed in opposition to the power residing in the people (Cic. *De Legibus* 3.12.28: supreme power is granted to the people and actual authority to the Senate: 'potestas in populo, auctoritas in senatu sit'). Starting with Rome, see e.g. Arendt (1961), 120-125; Furedi (2013), 1; Lincoln (1994), 2.

<sup>82</sup> Santangelo (2013), 744-745. See also Scanlon (1994), 37-43. Lincoln (1994), 2-3 defines *auctoritas*' interest for students of authority as its relation to making pronouncements which are consequential, based on discussions of the term in early legal Roman texts.

<sup>83</sup> Cf. Arendt (1961), 233.

tool with which to examine stories such as the Kallistratos one and the speeches in which they are presented.

### ***Authority between power and persuasion***

Authority is a term important in the fields of sociology, philosophy, political science and literary studies, where it is considered a central category of analysis for the study of human society – and, for sociology, even at times one of the principal challenges facing society.<sup>84</sup> What authority means depends in some way on the context in which it is used: in literary studies, for example, authority is often used to talk about specifically authorial authority and the way in which the author of a work employs and manipulates, as well as places himself within, an established tradition, whether literary or historical.<sup>85</sup> In philosophical and sociological sciences, on the other hand, authority is coupled not with tradition but appears recurrently in conjunction with power. One strand of such research often conflates the two categories. Political authority especially is regularly discussed in such a way that it becomes a synonym of power or at least of the traditional approach to power, which takes it as a coercive and repressive force: power, in this sense, is the right to use force legitimately, usually centred in the state. It is the holder of this power who through force guards, controls and dispenses privileges and protections in society, leading also to the formal right to prescription or the legislation of rules and norms.<sup>86</sup> Another strand of analysis, however, recognises a distinction between the two: authority is subtly, and crucially, different from such power as described above. It is, as we shall see, more discursive in nature and includes an implied notion of legitimisation: authority is power which is built upon a sense of legitimacy. Max Weber's work

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<sup>84</sup> Cf. Furedi (2013), 299-327. Furedi's *Authority: A Sociological History* presents an overarching and interdisciplinary investigation into the concept of authority.

<sup>85</sup> Authority is thereby often paired with tradition: see e.g. Marincola's *Authority and Tradition in Ancient Historiography* (1997); cf. also Scanlon (1994), 37-38 and Bromilow (2013) on literary authority in the Middle Ages and Renaissance, respectively, as the tradition of the past enforcing and enabling the present.

<sup>86</sup> This notion of power stems from social contract theory and goes back to Hobbes, as Ober (1994), 86-87 demonstrates. For an overview of modern conceptions of power, starting from Hobbes, see Clegg (1989), esp. 1-20.

on the concept of authority is a useful scrutiny of this distinction and a compelling starting point for a definition, considering its foundational value.

Interested in power and its organisation in human society, Weber defined *Macht* (power) as “the possibility of imposing one’s will upon the behaviour of other persons”.<sup>87</sup> He was particularly interested in one form of this, *Herrschaft*, and distinguished it from *Macht* (which also includes, for example, brute force) by two things: the notion of legitimacy and the acceptance of it by those who are not in power.<sup>88</sup> How to translate *Herrschaft* in English is a matter of debate: while it is at times rendered as “domination” or “rule”, the translation as “authority”, employed (at times) by the English editors of Weber’s *Wirtschaft und Gesellschaft*, has arguably become the most commonly-used rendition.<sup>89</sup> Weber states at one point in his *Wirtschaft und Gesellschaft* that *Herrschaft* is synonymous with *Autorität*, and he applies it specifically to “domination by virtue of authority” (in contrast to domination by virtue of market interests) as “the power to command and the duty to obey”.<sup>90</sup> Weber classifies legitimate authority (*Herrschaft*) into three types: legal-rational, traditional and charismatic. The factor of differentiation here is the *source* of authority, that is, the claim of legitimacy upon which the authority rests: the legality of enacted rules, the sanctity of traditions, or the charismatic personality of an individual, respectively.<sup>91</sup> Weber’s analysis aids the understanding of the distinction between authority and power. In Weber’s conception of *Herrschaft*, the notion of legitimacy stands central: authority is differentiated from power by its claim to legitimacy (though this claim does not

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<sup>87</sup> Weber (1968), 942.

<sup>88</sup> Weber (1968), 53-54, 212-245 (esp. 212-216), 941-942.

<sup>89</sup> Roth and Wittich, the editors of the English version of *Economy and Society* (Weber 1968), use both ‘authority’ and ‘domination’. It appears that Weberian scholars prefer the term domination (or to simply keep the original *Herrschaft*) whilst scholars in sociology, history, religion and political science who apply Weber’s theories, in particular the classification of types of *Herrschaft*, prefer ‘authority’: see Swedberg (2005), 65-66. On the different English terms used and for a justification of the translation as ‘authority’, see also Richter (1995), 68-77.

<sup>90</sup> Weber (1968), 943. The terms as synonymous, see Weber (1968), 212 (Original: Weber (1972 [1922]), 122.) Weber’s full definition of *Herrschaft* is “the situation in which the manifested will (*command*) of the ruler or rulers is meant to influence the conduct of one or more others (*the ruled*) and actually does influence it in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake.” Weber (1968), 946.

<sup>91</sup> Weber (1968), 215. Charismatic authority is the one most studied. On the concept of charisma in Weber and beyond see McCulloch (2014).

necessarily have to be a successful one). Power is enacted, while authority is legitimated. Second to this notion of legitimacy, authority can also be distinguished from other forms of power by the reaction of the subordinated party. The performance of authority is seen as a relationship (*Herrschaftsverhältnis*).<sup>92</sup> It may be an asymmetric one, yet it does rely on a positive commitment on the part of the subordinate: for Weber, normative endorsement is a crucial element of authority and a factor which differentiates it from power based on coercion.

The usefulness of Weber's work on authority for the study of ancient Athens has been regularly ignored. Moreover, the few ancient historians who *do* engage with Weber have focused primarily on Weber's explicit analysis of the ancient Greek city-state, which he did not develop in a consistent manner but rather in bits and pieces throughout his work.<sup>93</sup> Weber classified the Greek polis as a city based on charismatic authority, run by charismatic politicians, demagogues, – a portrayal which is overly simplistic and has justly attracted criticism, most comprehensively by Moses Finley.<sup>94</sup> Finley argues instead for an instrumental view of politics and considers policy and programmes to be the basis for decision-making in classical Athens.<sup>95</sup> Josiah Ober recently revisited the debate by setting up his own approach to Athenian democracy as an in-between to these two specialists: his focus on and use of 'ideology' as a study tool allows him to situate his approach between Weber's charismatic demagogue, who relies only on emotional appeals, and Finley's promise-delivering *rhetor*.<sup>96</sup> These discussions of Weber's portrait of Athens present only part of the picture and are somewhat unfair, as they take too little into account the fact that Weber's forms of authority are not descriptions of historical cases but rather ideal types, as Weber himself obviously made clear.<sup>97</sup> Others too have of course taken this classification more literally and, expanding it, applied it to numerous cases.

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<sup>92</sup> Weber (1968), 213.

<sup>93</sup> Finley (1985), 93, n.21 collects the evidence. On a different notion of Weber, namely rationalization, and its application to ancient Greek religion, more particular Pythagoreanism and Orphism, see Bremmer (1999b).

<sup>94</sup> Finley (1985). He reserves his critique of Weber only for his work on Greek polis politics – the ancient economy is another matter: see Finley (1985), 88-90 and Finley (1977).

<sup>95</sup> Finley (1985), 98.

<sup>96</sup> Ober (1989), 124.

<sup>97</sup> Weber (1968), 216: "It may be said of every historical phenomenon of authority that it is not likely to be 'as an open book' (kein ausgeklügelt Buch)."

One example is Joachim Wach's typology of religious authority, which uses charisma as criterion to differentiate between ten classes of religious authority, such as 'prophet', 'seer' and 'diviner'.<sup>98</sup> Furthermore, the limits of Weber's analysis of the Greek city are mirrored in part by the narrow boundaries of Finley's analysis, which is set firmly on political authority.<sup>99</sup> Much more useful to the study of ancient Athens – and particularly its religion – than Weber's own piecemeal analysis of ancient Greece is his more general theory of the classification of authority, as described above. Weber's classification can be used to generally structure thinking about authority, while his focus on the claims of legitimacy upon which this classification is built calls attention to the processes through which authority is formed.

Of course, Weber's separation of authority from power is based on a very traditional approach to the concept of power – judicial and coercive in nature – which goes back to social contract theory.<sup>100</sup> Recently critics have claimed that Weber's focus, also in his concept of *Herrschaft*, on the production of authority downplayed the conditions which made forms of authority socially acceptable. Frank Furedi, for example, remarks, "Weber tended to focus on the command side of the authority relationship at the expense of studying how it was accepted and internalised", thereby also leading to a narrow political focus.<sup>101</sup> As the twentieth century progressed, scholars more and more recognised authority's relevance also to cultural, social and religious contexts. Michel Foucault's work on power and knowledge can be seen as a famous expression of this turn – even if he makes use of the term power rather than authority.<sup>102</sup> Foucault is

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<sup>98</sup> Wach (1944), 360, 331-374. For a critique of Wach's typology see Rüpke (1996) who criticises his focus on the specialist's own claims of authority (based on the intensity of his relationship with the divine) as basis for his categorisation. Rüpke suggests instead that all religious specialists should be seen as 'controlling agents', as a way of studying the specialist's position within the social system of his religion: see Rüpke (1996), 246.

<sup>99</sup> Finley's own take on authority in Athens similarly is limited to the question of political authority and legitimacy: Finley (1982).

<sup>100</sup> See n. 87.

<sup>101</sup> Furedi (2013), 7.

<sup>102</sup> This does not have to be seen as problematic. Foucault's term 'power' can name the same phenomenon which others call 'authority': cf. Furedi (2013), 7 and Lincoln (1994), 2. This thesis chooses to use the term 'authority' to discuss this phenomenon: in ancient attitudes to these notions, 'power' is more often conceptualised along the lines of the traditional, coercive approach, which means that the use of the term 'authority' causes less confusion. Secondly, 'authority' also supports a move away in focus from the political to the religious and social, whereas with 'power' the political dimension is more deeply entrenched and harder to shift from its position of predominance.



interested in “power at its extremities, in its ultimate destinations, with those points where it becomes capillary”.<sup>103</sup> He sees it as productive rather than repressive and is more concerned with the dissemination and production of knowledge than with power as represented by law or sovereignty. Power to him is not something which can be conceptualised as a possession; rather, it is a relationship.

Building upon both the centrality of legitimacy in Weber’s *Herrschaft* and the relational conceptualisation of Foucault and others, is Bruce Lincoln’s 1994 *Authority: Construction and Corrosion*. In this work, the historian of religion attempts not only to define authority, but also to examine how it can be studied practically in different historical contexts, taking authority out of a narrowly political context, and contending that it also has cultural, social and religious significance.<sup>104</sup> Lincoln defines authority as:

the effect of a posited, perceived, or institutionally ascribed asymmetry between speaker and audience that permits certain speakers to command not just the attention but the confidence, respect, and trust of their audience, or – an important proviso – to make audiences act *as if* this were so.<sup>105</sup>

This definition will serve as the foundation of this thesis’ use of the concept of authority. In his conceptualisation, Lincoln sees authority not only as distinct from coercion, “the process through which one bends others to one’s will through acts or threats of violence”, as Weber has.<sup>106</sup> Rather, Lincoln differentiates it from persuasion too, which he describes as “the process through which one wins others over through acts of discourse”.<sup>107</sup> Authority is a medial concept, situated between coercion and persuasion. He argues that authority is related to both these framing entities in symmetrical ways, as both are “capacities or potentialities implicit

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<sup>103</sup> Foucault (1980), 88-107, quotation on 96. See also for example Foucault (1970) and on similar other perspectives within this approach to power, see Brown (2006).

<sup>104</sup> Cf. Furedi (2013), 7-8, for an overview of the development of authority as a concept with broader significance than merely political.

<sup>105</sup> Lincoln (1994), 4.

<sup>106</sup> Lincoln (1994), 4.

<sup>107</sup> Lincoln (1994), 4.

within authority”.<sup>108</sup> Authority is here made distinct from persuasion by the fact that the persuasive element does not have to be explicit: “the exercise of authority depends less upon the capacity of reasoned elaboration as on the *presumption* made by those subject to authority that such a capacity exists, or on their calculated and strategic willingness to pretend they so presume.”<sup>109</sup> Lincoln takes authority here not so much as an entity, as something which can be possessed by or contained in something, but rather as an aspect of discourse. It is, he avers, “(1) an effect; (2) the capacity for producing that effect; and (3) the commonly shared opinion that a given actor has the capacity for producing that effect.”<sup>110</sup> He sees it as a dynamic constructed-and-contested process, which makes use of authorising tools, times and places. This conceptualisation of authority can be usefully applied to the world of fourth-century Athens, its democratic society and its oratory, and will aid us in fully examining the way authority, and specifically religious authority, functions in the speeches of the Attic orators.

### ***Ancient Greek terminology***

Before moving on to illustrate specifically how these theoretical considerations are relevant to the topic of this thesis, we need first to complement this etic definition of authority by examining the possibility of an emic way of tracing this concept of authority in ancient Greece. Such an approach might be a linguistic one, tracing the usage and meaning of words over time and in different genres and contexts, in order to examine how Greeks themselves conceptualised social relationships. However, the inefficacy of this approach lies in its limitation to terminology – not everything which is authoritative is also called such, evidently. Furthermore, as the study of the semantics of potentially relevant terms will illustrate, many of the words employed are limited in application to a political context. They therefore do not prove helpful as an indicator or terminology for the way in which authority functions with

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<sup>108</sup> Lincoln (1994), 6.

<sup>109</sup> Lincoln (1994), 5. Arendt (1961), 91-95 presents a similar view of the relationship between persuasion and authority.

<sup>110</sup> Lincoln (1994), 10-11.

regard to other aspects of society, such as religious thought and action. Nonetheless, a brief overview of such terms will be useful here not only to demonstrate the difficulty in attempting to pin down authority, but also as illustration of the above theoretical discussion of authority and power, demonstrating in an ancient Greek context their closeness, yet distinctiveness.

In Ancient Greek language, numerous terms were used to describe the exercise of rule, influence or pressure of different kinds. A first example is κράτος, which is often tied up closely to its physical meaning of strength or force, and is used primarily in a political context. The terms ἀρχή and δύναμις too are often employed to denote similar, mainly political, relationships.<sup>111</sup> Two recent studies (Gotter 2008; Campa-Thompson 2014) of the concept of power in the ancient Greek world which present lexicographical analyses take these terms as indicating ‘power’ – the terms, like both studies, focus very much solely on a political context.<sup>112</sup> Another related term is ἐξουσία, which though it can denote both power (or control) over or power (or permission) to do something, is primarily used to denote the latter, that is positive freedom; the ability to act upon one’s free will.<sup>113</sup> Thucydides for example makes use of it to discuss the “uncontrolled power (ἐξουσίας) of all men to live as they please” (Thuc. 7.69.2).<sup>114</sup> This sense makes this term too distinct from authority. As Gotter has argued, ἐξουσία and the above terms are not used in classical texts to denote ability or potential so much as actual assertion or application of such power: as if assuming anyone who had the potential to assert power always actually also did so.<sup>115</sup> All of these only convey one narrow form of the exercise of influence; that invested in specific offices or derived from political constitutions.

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<sup>111</sup> Thucydides, for example, uses κράτος, as well as ἀρχή, to articulate power: see Gotter (2008), 186-189. On δύναμις as power, see for example Arist. Rhet. 2.17.1-4.

<sup>112</sup> Gotter (2008) discusses power, focusing on explicit discussions of this, such as the famed Melian dialogue episode in Thucydides. He compares the Greek concept of power with the way in which this became received in Roman times. See also Campa-Thompson (2014), whose doctoral thesis studies the concept of power alongside freedom, focusing on the way in which the collective power of the *demos* affects individual power and consequently individual freedom.

<sup>113</sup> Cf. Miller (2009), 304 who takes ἐξουσία as defining “a sphere of liberty or privilege within which the agent is free to choose”.

<sup>114</sup> Cf. Campa-Thompson (2014), 32.

<sup>115</sup> So Gotter (2008), 198-199 sees such a conflation of ‘rule’ and ‘power’ in ancient Greek discourses on power in general, an idea expressed emphatically by Thucydides: “For of the gods we think according to the common opinion; and of men with certainty, that by necessity of nature whoever has the power, rules (οὗ ἄν κρατῇ, ἄρχειν)” (5.105.2).

These terms thereby focus very much on the ability to coerce and/or legislate, and convey something akin to power, rather than authority.

A more potentially useful term to denote authority is κύριος.<sup>116</sup> In its widest sense, it can denote ‘power over’ as well as ‘power to’.<sup>117</sup> As a noun, it is used mainly in a domestic sense, designating the head of a family, master of a house, or guardian of a woman.<sup>118</sup> That κύριος is not necessarily absolute, is clear already by one such application: women can be subject to multiple κύριοι, a natal one (usually her father) and a marital one (her husband), whose overlapping control can be a potential for conflict.<sup>119</sup> Yet as an adjective, κύριος has a wider usage and can also denote power and influence in other spheres, relating to individuals, collectives, institutions or institutional apparatuses. It is the term most used in fourth-century sources, including oratory, to discuss political power, but it is also employed in meanings beyond the purely political – making it therefore in two ways the most potentially useful Greek term for this present study.

Some examples illustrate the variety of ways in which κύριος can be employed. First of all, it can designate simple political power. Aristotle, for instance, uses it to describe sovereignty in his discussion of who should be κύριος in the polis; the multitude, the rich, the good or a tyrant (Arist. *Pol.* 1281a11-13). In the Aristotelian *Athenaion Politeia* κύριος is at times given a sense similar to self-sufficiency or sovereignty: it is used in conjunction with αὐτοκράτωρ, ‘being one’s own master’, and αὐτοτελής ‘self-sufficient’, to describe complete control, as in the case of Athenians moving to Eleusis who retain their status as κύριος and self-governing (*Ath. Pol.* 39.1: ὄντας καὶ κυρίου καὶ αὐτοκράτορας), or the *thesmotetai* in Solon’s time, who were κύριοι to give final judgement in lawsuits (*Ath. Pol.* 3.5: κύριοι δ’ ἦσαν καὶ τὰς δίκας αὐτοτελεῖς

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<sup>116</sup> In his study of the linguistic terminology of rights in ancient Greece, Miller (2009) takes κύριος as ‘authority or power’. He recognises the wide application of the term but as he is focused on rights, examines it particularly with regard to property rights: see 304-305.

<sup>117</sup> LSJ s.v. I.1, I.2.

<sup>118</sup> Also owner of a slave: see for example Antiph. 2.4.7. On κύριος in the household context, see Campa-Thompson (2014), 41-45.

<sup>119</sup> Todd (1993), 209.

κρίνειν).<sup>120</sup> However, the word can also be used in a less absolute and less governmental sense, to describe for example the purview of magistrates (αἱ ἀρχαὶ) or particular courts, who are said to be κύριαι to judge certain types of cases (Arist. *Pol.* 1287b15-16; *Ath. Pol.* 45.1, 45.4). It can therefore be used on a general political level, as well as an institutional one. At the same time, κύριος can also mean valid or legitimate: it is used not only of laws which might be in use and thereby legally binding, but Demosthenes uses it too, for example, in quoting a law which describes the rewards granted by the *demos* to benefactors as legitimate (τὰς δωρεὰς ὅσας ὁ δῆμος ἔδωκε κυρίας εἶναι) (Dem. 20.96).<sup>121</sup> The most important meeting of the Assembly in every prytany was called the *ekklesia kyria*, the adjective here taking the meaning of most important (*Ath. Pol.* 43.4: “they also put up notices of Assembly meetings; one κυρίαν (...”). It can be employed on an individual level too: Aeschines for example, ends his defence plea in the case on the Embassy by saying, “one thing was in my power (ἐγὼ (...) κύριος ἦν), men of Athens, to do you no wrong. But to be free from accusation, that was a thing which depended upon fortune (ἡ τύχη), and fortune cast my lot with a slanderer, a barbarian” (Aeschin. 2.183). By casting it in opposition to τύχη, Aeschines uses κύριος here in the sense of personal power, self-control, positive freedom.

The term evidently has numerous meanings and applications, but in oratory, particularly judicial, the adjective κύριος is applied most often to one of three entities: the laws, the members of the audience, or the litigants of a case. The laws which are κύριοι are those in power, those in effect. Unsurprisingly, one finds many discussions of this assertion in cases concerning legislation, such as *graphe paranomon* (e.g. Dem. 24.1), but also elsewhere (Hyp. 4.5). Again, this is not absolute, as a hierarchy of κύριος exists. Demosthenes illustrates this with his assertion, “a law declares that no decree, even though in itself constitutional, shall be more κύριος than a law (νόμου κυριώτερον εἶναι)” (Dem. 24.30).<sup>122</sup> Prosecutors frequently cast their

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<sup>120</sup> Cf. Rhodes (1993), 106, 464.

<sup>121</sup> Decrees (Dem. 23.96), wills (Dem. 36.34) and contracts (Dem. 59.46) can also be κύριος, as Miller (2009), 315 discusses. See also the description of effective and ineffective ballots as κύριος and ἄκυρος in *Ath. Pol.* 68.4.

<sup>122</sup> Also e.g. Dem. 24.43.

opponents' potential acquittal as an assault on the nature of the laws as κύριοι: "For if you punish the wrongdoers, your laws will be good and valid (οἱ νόμοι καλοὶ καὶ κύριοι); but if you let them go, the laws will still be good, indeed, but valid no longer" (καλοὶ μὲν, κύριοι δὲ οὐκέτι), as Aeschines argues in his speech *Against Timarchus* (Aeschin. 1.36). The audience of judges, just like the laws, are said to be κύριοι too (Dem. 24.118). The relationship between the laws and judges, and whose power might be supreme or in function of the other, is a much debated issue.<sup>123</sup> In Demosthenes' *Against Meidias*, it is the laws which make the audience of judges ἰσχυροὶ καὶ κύριοι, as Demosthenes represents the two entities as mutually empowering (Dem. 21.113-224).<sup>124</sup> Lastly, prosecutors often accuse defendants of abusing their κύριος: Demosthenes, for example, accuses Timocrates of "presuming to claim for himself an authority higher (αὐτὸν κυριώτερον) than that of the convicting jury" (Dem. 24.76). This is a rhetorical argument, of course, but the use of terms of power to discredit opponents highlights the way in which κύριος is understood as describing a power relationship: something or someone is κύριος over something or someone. κύριος can be used then to denote an effect on others, both in a political and social sense, and at institutional and individual levels. It may be used to discuss a type of influence different from physical strength and different from a capability based on brute force. It is also not an absolute capacity, as different entities can be considered κύριοι at the same time.

As such, κύριος comes closer than any other Greek term to the notion of authority, as defined above in sociological perspective. However, it is still primarily applied to official instances of authority: to those who hold legislative or judicial force. Furthermore, it remains largely confined to a political or judicial sphere, used less, for example, within a religious context – except as a form of address to divinities, where the sense of κύριος is similar to its substantive

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<sup>123</sup> As Aristotle frames the question: "But since, although some things can be covered by the laws, other things cannot, it is the latter that cause doubt and raise the question whether it is preferable for the best law to rule or the best man (τὸν ἄριστον νόμον ἄρχειν αἰρετώτερον ἢ τὸν ἄνδρα τὸν ἄριστον)" (Arist. *Pol.* 1287b.19-22). See Liddel (2007), 110-124.

<sup>124</sup> The passage is especially interesting for its vivid and striking presentation of the laws: see Chapter Five. As MacDowell (1990), 422 points out, Demosthenes switches here from talking about the judges to the *demos* in general: the two are regularly conflated in forensic oratory.

meaning of ‘master’, denoting a hierarchical relationship.<sup>125</sup> Therefore, to analyse the way in which authority functions, and specifically how religious authority works, it will be necessary to go further than explicit applications of a single term, to incorporate instances of influence, questions of legitimacy and suggestions of reciprocity.

A final point to make is that this lack of definite terminology for a concept of authority does not have to be taken as signalling a lack of authority in and of itself in ancient Greece. Scholars who go back to the Roman *auctoritas* and the absence of a Greek translation, such as Hannah Arendt, argue this.<sup>126</sup> Furedi too has argued this.<sup>127</sup> Finley even sees also an absence of a discussion of authority in the ancient city-state, a lack of any normative discussion of authority’s permissibility or justifiability, for example.<sup>128</sup> However, these studies, with the exception of Furedi, focus primarily on authority in a political context and take it as a static possession. It is true that there is very little explicit discourse of authority in ancient Greek sources; no discourse of the kind which exists, for example, for the two entities which authority is often contrasted to, i.e. persuasion and force. In classical Greek thought (both in prose and poetic sources), force (βία) and persuasion (πειθώ) are often similarly placed in opposition to one another. Lysias and Isokrates, for example, make the argument that πειθώ is what separates out civilised humans, whether from animals (Lys. 2.18-19; Isoc. 3.6) or from force-wielding ‘uncivilised’ men distant in time (Isoc. 4.39-40) or place (Isoc. 15. 293-4).<sup>129</sup> Herodotus has Themistokles tell the people of Andros that the Athenians have two gods, Peitho (persuasion) and Necessity (ἀνάγκη) (Hdt. 8.111). In Plutarch’s version of the story (*Themistocles* 21) Peitho

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<sup>125</sup> Similar, for example, to δεσπότης. On κύριος as a divine address and the use of epithets denoting power in general, see Pleket (1981), 171-183.

<sup>126</sup> Arendt (1961), 104.

<sup>127</sup> Furedi (2013), 36.

<sup>128</sup> Finley (1982), 13. Though contra Farenga (2015), who suggests that if one understand authority as a “composite concept”, it can be considered present in ancient Greece. He argues that states did “rely on forms of authority recognized as legitimate by ‘the one who commands and the one who obeys’” (110). Cf. also Rosler (2005), esp. 87-115, who argues that political authority is a concept present in Aristotle’s works.

<sup>129</sup> Cf. Buxton’s excellent discussion of *peitho* in Greek thought in Buxton (1982), 58-62. It is part of the more general idea that language is the primary distinctive human trait (Isoc. 4.47-50), and is often paralleled with an opposition between the presence/absence of justice and of laws: see Buxton (1982), 60-61.

is paired with Bia (force). Hesiod is the first to present Peitho also as a goddess (*Theog.* 349), after which she is usually depicted as Aphrodite's daughter, linked to sex and seduction - the latter term already suggests that this is one aspect in which Persuasion's antithetical relationship to Force can become more ambiguous, *suggesting* an intermediary, even if there is no explicit detailed discourse of such a medial entity. By conceptualising it as a discursive and dynamic disposition, rather than as something 'held', it is possible to recognise authority in ancient Greece.

As such, authority should be considered then as a heuristic tool which helps sharpen and tease out the meaning of power relations in the ancient Greek world. It will contribute to the understanding of the complex interplay of often conflicting agents and actors that governs decision-making in classical Athens, as expressed through oratory: the laws of the city, its *demos* and democratic institutions, the speakers in these debates, the gods, priests and religious experts. As Esther Eidinow has advocated with regard to the emic/etic distinction: "(...) it is about negotiating understanding across two systems of meaning. The question is not about which set of terms we should use, theirs or ours, (...) but how to move effectively between the two".<sup>130</sup> Having explored the way in which both approaches may be applied to the topic at hand allows us to now examine how exactly the above theoretical considerations are relevant to the topic of this thesis, religion in Attic oratory. The rest of this chapter will show its application in two distinct ways, which also conversely serve to highlight the innovation and particular usefulness of Lincoln's approach. Moving closer to the Assembly and law courts of fourth-century Athens, it will first employ the concept of authority to examine how we can read and understand the genre of oratory. The final section of this chapter will then illustrate how these theoretical approaches can assist in asking questions of how specifically religious authority in ancient Greece functions.

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<sup>130</sup> Eidinow (2007), 18.



## 1.2 The genre of oratory: between authority and persuasion?

The first matter to consider is the question of how to read oratory. Before we can move on to examine the religious discourse of oratory, one has to examine how exactly this corpus of political, judicial and epideictic speeches from the late fifth and fourth centuries BCE should be understood. Particularly important is oratory's relation to the concept of authority, as this brings with it a seemingly problematic contradiction. Traditionally, oratory is namely understood as a genre of speech which is rhetorical in nature. Aristotle defines rhetoric as "the capacity to discover the possible means of persuasion regarding any subject" (*Rhet.* 1.2.1). This definition is still considered foundational to the understanding not only of Athenian oratory but any oratory in general: as rhetoric, it is the art of persuasion.<sup>131</sup> Furthermore, the development of a culture of public speaking in Athens during the classical period, in which citizens could present their views on judicial matters through rhetorical battles and public speeches were the medium of political deliberation, links persuasion not only closely to rhetoric, but to the development of Athenian democracy too: it is famously persuasion (πειθώ) which sits upon Perikles' lips.<sup>132</sup> We have seen above that Lincoln theorises authority as a concept related to persuasion, but incompatible with it. He takes authority's reliance on asymmetric relations between speaker and audience as one of its demarcating features, while he sees persuasion, on the other hand, as presupposing equality and working through a process of argumentation. He argues that if authority is asked to explain itself, this signals authority's failure, whereupon it can become (an attempt at) persuasion.<sup>133</sup> Lincoln is not the only one to juxtapose these two concepts as mutually exclusive: Arendt too, contended, "authority is incompatible with persuasion, which presupposes equality and works through a process of

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<sup>131</sup> On definitions of rhetoric, ancient and modern, and the place of persuasion in these, see for example Gunderson (2009), 1-9.

<sup>132</sup> In a quotation from the comedian Eupolis: "a kind of persuasion sat upon his lips. That is how he, alone among the orators, would bewitch his hearers, and leave his sting in them." πειθώ τις ἐπεκάθιζεν ἐπὶ τοῖς χεῖλεσιν οὕτως ἐκίλει καὶ μόνος τῶν ῥητόρων τὸ κέντρον ἐγκατέλειπε τοῖς ἀκρωμένοις (Eupolis fr. 94 5-7). Translation: Buxton (1982), 12.

<sup>133</sup> Lincoln (1994), 6.

argumentation. Where arguments are used, authority is left in abeyance”.<sup>134</sup> Traditional perspectives on rhetoric which would classify oratory as a means of communication functioning through persuasion would agree with this presupposition of equality: any citizen who wished to do so, on the principle of *ho boulomenos* (“any citizen who wishes”), could address the Assembly or bring a litigation to court, and anyone could be summoned to defend themselves in a court of law.<sup>135</sup> This appears to imply then, that oratory should be read as operating on the basis of an equal, democratic relationship between orator and audience: the orator is one of the *demos*, as *ho boulomenos* he could only be successful in his persuasion if he plays to, and thereby represents, the *demos*. It is on this basis that the ideas and discourses of oratory have also often been characterised as ‘popular’.<sup>136</sup> Yet is this really the case?

If one were to follow the delineation between the two notions of authority and persuasion, treating oratory as persuasive speech would make it impossible to read it also as an authoritative means of communication. Yet there are evident problems with the idea of oratory as a mode of communication based on equality, as several elements complicate the relationship between speaker and audience. First, when an Athenian walked up to the *bema* in the Assembly, he was advancing to an authorised and authorising place.<sup>137</sup> Similarly so for litigants in the law courts, authorised by the water clock to speak for a certain amount of time, these spaces provided speakers with an audience, who – though potentially disruptive – were largely willing hearers of what these speakers had to say.<sup>138</sup> The occasion itself functions as authoritative.<sup>139</sup>

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<sup>134</sup> Arendt (1961), 93.

<sup>135</sup> This is a fundamental principle of the Athenian democracy: cf. Hansen (1991), 266-267: “It was the function of *ho boulomenos* to provide the initiatives for the laws that would be passed by the *nomothetai*, the decrees that would be passed by the Assembly and the prosecutions that would be judged by the courts. He was the king-pin of Athenian democracy – and he was, in principle, anybody.” For a more critical approach to the idea that the volunteer prosecutor really was a disinterested third-party in many litigations, see Osborne (1985).

<sup>136</sup> See for example Dover (1974), 5-8; Mikalson (1983), 5.

<sup>137</sup> Cf. Lincoln’s ‘authorising tools’: Lincoln (1994), 7-9.

<sup>138</sup> Little is known for certain about the actual workings of Assemblies and trials or what they would have been like. A degree of audience participation, of disruption and heckling, laughing and shouting seems likely: Aeschines’ complaints about this in 3.2 (see also Dem. 19.23, 46) should be taken as more reflective of reality than his representation of the ideal of the law in 1.35. For discussion see Tacon (2001) and Thomas (2011), 171-185.

<sup>139</sup> Cf. Scodel (2001), 110.

Second, alongside place and time, the relationship between the speaker and the audience also suggests oratorical speech could be seen as authoritative. As Steven Johnstone points out, “those who spoke in the Assembly and the courts did so by virtue of a qualifying, pre-rhetorical authority: they were free, male, and usually citizens.”<sup>140</sup> That the identity of the speaker plays an important role is evinced by the significance of *ethos* in the argumentation of speakers.<sup>141</sup> While in principle any citizen could address the Assembly or bring a public litigation to court, the question of how frequently a regular Athenian might have done so, or how elite or ‘professional’ these *rheto*rs were in practice, is an important and debated issue.<sup>142</sup> Mogens Herman Hansen has shown that a relatively small number of people appear in our records as proposers of decrees, whilst in oratory it is the same few people who are mentioned again and again as those making policy suggestions.<sup>143</sup> Hundreds of men must have addressed the Assembly throughout the fourth century but only a minority of these would have been successful at persuading their audience.<sup>144</sup> To address such large crowds in such settings as the Pnyx, where the Assembly met, or the law courts, would have required oral and rhetorical skills – which also favours a minority, those who would have been able to receive rhetorical education and had the required vocal skills of delivery.<sup>145</sup> Attention to the identity of the speaker of the speeches which this thesis will analyse, is therefore paramount. The self-portrayal of speakers is in this regard not always particularly helpful, as they attempt to strike

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<sup>140</sup> Johnstone (2011), 168. Johnstone discusses the use of the concept of authority in analysing oratory but dismisses it eventually in favour of the idea of trust. This is an interesting proposal, though I disagree with his dismissal of authority on the basis “it does not allow any discretion or activity for the listeners” or cannot account for multiple speakers in opposition. As this chapter has shown, authority is not absolute, nor does it automatically require agreement.

<sup>141</sup> On *ethos* and its bibliography, see Carey (1996b).

<sup>142</sup> This feeds into the question of how democratic Athenian democracy was. For an overview of earlier scholarship on this see Osborne (2010 [1985]), 1-10; cf. also Hansen (1991); 266-276 and Ober (1989), 104-118, 156-174, who collects the evidence for the social and political background of public speakers, discusses the terms *rheto*r and *idiotes* and the rhetorical education of the elite.

<sup>143</sup> Hansen (1989), 120-125.

<sup>144</sup> Cf. Worthington (2007), 263.

<sup>145</sup> On the physical locations where these oratorical performances took place, and their effect on the speech, see Johnstone (1996), 97-128. He suggests, for example, that at Assembly meetings on the Pnyx “under the *best possible* conditions, perhaps one fifth of the audience could not have heard well enough to have understood more than about 85 percent of what was said” (122). This has implications for the identity of speakers, as a higher level of difficulty suggests a higher level of proficiency needed to succeed.

a balance between appearing knowledgeable and expert, yet not too rhetorical or sophistic which could inspire distrust.<sup>146</sup> As we shall see, the claim to expertise is of particular importance for the way in which divine signs are referenced and employed. The notion that classical Athenian oratory is always based on a completely equal relationship between speaker and audience should therefore be considered less a reality than an ideal, as the misleading picture portrayed by theorists of rhetoric and by orators themselves. The idea that oratory is a genre of communication which is straightforwardly and exclusively persuasive should be challenged.

Another element which suggests oratory might fit into the picture of authoritative discourse described in the first part of this chapter, is the audience itself. As Lincoln avers, authority employs its audience as a tool, “whose historically and culturally conditioned expectations establish parameters of what is judged ‘right’”.<sup>147</sup> This latter statement draws attention to a crucial dualism which explains how ancient oratory functions. It is described by Harvey Yunis in his theory of Athenian democracy as the co-existence of an ‘empirical’ and ‘ideal’ level of political rhetoric.<sup>148</sup> On an empirical level, rhetoric functioned by respecting the needs and rules of the community: orators constructed their arguments on the basis of the values and principles of the citizen body, as they attempted to convince a majority.<sup>149</sup> Rhetoric works then, when it functions within an existing civic framework. Yunis also recognises however that rhetoric not only makes use of, but also helps to create this civic framework. The ideal criterion sees rhetoric as performing more tasks than mere conflict mediation; it also plays a role in “summoning the *polis* into actuality as a community”.<sup>150</sup> As Yunis puts it:

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<sup>146</sup> Cf. Ober (1989), 187–191. An example of the kind of balance which speakers had to strike can be seen in Dem. 18. 276–277, where he refutes Aeschines’ accusation that he is a sophist and an artful, deceiving speaker, alleging that those terms describe Aeschines himself. Demosthenes then goes on to admit he possesses speaking skills (it would be hard not to, at this late point in his career) but has only ever put them to use for the good of the city.

<sup>147</sup> Lincoln (1994), 11.

<sup>148</sup> Cf. also Leff (2009).

<sup>149</sup> Yunis (1996), 27–28 defines the empirical criterion as understanding rhetoric as an efficient mechanism of mediating political conflict, as the citizen body takes up its civic responsibility to select leaders, who are in turn accountable for their actions, in order to attain non-political ends.

<sup>150</sup> Yunis (1996), 28.

With regard to the ideal criterion, rhetoric must persuade the auditors, but mere persuasion does not suffice to accomplish the higher tasks: what is wanted is the creation in the minds of the audience of an enlightened self-understanding that actually dispels conflict and realizes the politically harmonious community.<sup>151</sup>

In other words, the role of oratory with regard to Athenian society is simultaneously a sustained and sustaining one: orators employ the rhetorical context in which they perform their speech, and the conventions and principles of Athenian religious, political and social values, to construct their speech as authoritative, while at the same time it is through this discourse that they create the social and political context and construct the community which allows them to hold this authority.<sup>152</sup> The genre of speech in which this principle is best illustrated is the funeral oration. Commemorating the achievements of the recently deceased, these orations delivered yearly in Athens placed recent events within an established tradition of praise for the values of the city, its citizens and its past. Through stories of myth and history, these speeches paint a picture of notions, such as the Athenians' value of freedom (Hyp. 6.16, 19; [Dem.] 60.23; Lys. 2.40-42), and expand on these by applying them to contemporary events and people, thereby also making values such as freedom a defining feature of Athenian self-identity. The funeral orations have long been recognised as not only expressions of, but active contributions to, civic ideology.<sup>153</sup> Deliberative and forensic oratory function on the same principle. An example can be found in Demosthenes' *First Philippic*, an oration delivered to the Athenian Assembly in 351/350 BCE (Dem. 4). Demosthenes' aim in the speech is to persuade the Athenians, firstly, to consider Philip of Macedon a threat and, secondly, to take this threat seriously and act upon it. Throughout the speech Demosthenes portrays the Athenians as a people who have foregone and forgotten their civic duties, who do not want to take a personal

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<sup>151</sup> Yunis (1996), 28.

<sup>152</sup> Cf. Ober (1989), 338 who also recognises the role of speech in Athenian democratic society as part of a reciprocal relationship: "The key symbols were both revealed and generated through the two-way communication of public speech." Cf. also Ober (1994), 89: "Athenian ideology, the discursive basis of Athenian society, was not given from on high and was not a unique product of elite culture, but rather it was established and constantly revised in the practice of public debate."

<sup>153</sup> See Loraux's (1986) foundational work on this topic; also Shear (2013). Cf. Carey (2007), 243, who asserts the funeral oration is "an act of collective self-definition and self-assertion.". Martin (2009), 290-292 discusses religious argumentation in the funerary orations.

risk in order to protect the collective city (e.g. Dem. 4. 7, 10, 25-27, 40, 46). He argues that to be a good citizen one must be useful to the *polis*, and he applies this common value of usefulness to the specific situation, arguing that the Athenians should thus be willing to go to war: “if each citizen is ready to throw off his diffidence and serve the city as he ought and as he best may, the rich man paying, the strong man fighting (...)” (Dem. 4.7). Through rhetoric, speakers in the Assembly and the law courts can both communicate and manipulate the participatory ideals of their community.<sup>154</sup>

Oratory is unmistakably persuasive: these speeches exist for delivery in an agonistic context, either in a straight-up duel in the law courts, or in a deliberative, debating setting in the Assembly. They are not laws or orders which are necessarily observed and obeyed, nor are they words which derive power from their origins by themselves. However, as discussed above, the relationship between public speaker and audience is more complex than simply symmetrical. If one takes into account the context in which orators address the citizens in the Assembly and the law courts, the identity of the speakers who get to do so and the symbiotic relationship of oratory and civic ideology, a picture emerges of a mode of communication which is more complicated than the traditional view suggests and, as a consequence, which functions on more than mere persuasion. Permission plays a part in it too: certain speakers are permitted to command attention, confidence and trust from their audience – or they make audiences act as if this were so. It is possible then to study oratory not only as a method of communication which aims to persuade, but one which does so by making use of authoritative discourse.<sup>155</sup>

The strict dividing lines between authority and power, on the one hand, and authority and persuasion, on the other, as constructed by Weber and Lincoln respectively, might appear less like fortified walls and more like permeable perimeters, upon application to specific historical

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<sup>154</sup> Cf. Roisman (2014), 281-288.

<sup>155</sup> Cf. also Ober (1994), 86-87 who advocates for the importance of oratory as a source for how power works in ancient Athens. He argues that a ‘discourse’ paradigm is more useful here than one which takes power simply as coercion. Ober thus uses power in a way similar to Foucault’s power, that is to say similar to the concept of authority used in this study.

contexts. Applying constructed definitions of terms such as authority to a particular context like fourth-century Athens makes evident their limits: they are heuristic tools, not essentialised and fixed notions. An awareness that the degree of difference separating supposedly opposite notions is not always that easily observable, or can be blurred in practice, is present, for example, even in ancient interpretations of *πειθώ* (persuasion) and *βία* (force): In his *Encomium to Helen*, Gorgias argues that *logos* through persuasion “constrained Helen both to obey what was said and to approve what was done” (Gorgias, *Helen* 12). Peitho can use force too, as the chorus laments in Aeschylus’ *Agamemnon* (Aeschylus, *Agam.* 385-386: βιάται δ’ ἄ τάλαινα πειθώ).<sup>156</sup> Thucydides can describe the Athenian general Cleon as both forceful and persuasive: his ability to persuade has the same effect as *βία* (Thuc. 3.36.6).<sup>157</sup>

Of course these exceptions to the usual opposition carry effect precisely because they challenge an expected antithesis.<sup>158</sup> Yet *πειθώ* can be *βία*, depending on how one defines these terms and the context in which they are employed. Orators make regular mention of the authority of their audience, the *demos* in the Assembly or the judges in the law courts, who are also regularly equated with the *demos* itself. Yet, paradoxically, their speech at the same time claims to address an authority, whilst doing so with authority itself. Definitions and terms are useful because they aid us in focusing attention on particular aspects of a situation, throwing the spotlight onto elements of a particular phenomenon or source which may otherwise get lost in the larger picture. Authority is, I would argue, a useful term to examine the effect and power which a variety of different individuals, collectives and institutions construct. It places emphasis on the created and contested nature of the effect by which a person can speak or act with a force which effects a response from another person, thereby highlighting not the result of power, but the *process* through which this power comes to be held.

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<sup>156</sup> “He is forced by relentless persuasion (...)”: see Lloyd-Jones (1979), 55.

<sup>157</sup> Rothwell (1990), 30-31.

<sup>158</sup> Buxton (1982), 63.

### 1.3 Religious authority in ancient Greece

This chapter has so far set out a working definition of authority, which differentiates it from power and persuasion, whilst also conceptualising it as something more dynamic and exhaustive than traditional, static political authority. It has shown that authority is therefore a concept which can be considered valid for the study of ancient Greece, despite the lack of clear-cut terminology. This chapter has subsequently analysed how oratory can be understood as a form of communication which does not only have persuasion as goal, but is also authoritative in nature. Building upon this definition and first implementation, it is now possible to narrow the focus to religion and religious authority in particular.

Based on an understanding of religion which emphasises its ordinary nature and does not ascribe it any inherent specialness, religious authority can be said to simply constitute one type of authority.<sup>159</sup> As Sally Humphreys puts it, “transcendence, whether it takes the form of divine revelation or of theoretical cosmology, implies a search for authority outside the institutionalized offices and structures of the seeker’s society.”<sup>160</sup> Religious authority, broadly defined, is authority which is understood as religious in two distinct, though potentially overlapping, ways. It can be defined as the effect, and the capacity to produce such effect, to command attention, confidence and trust with regard to matters which deal with religion - the acts, rituals and beliefs which make up people’s worship of the gods. In this way, authority is ‘religious’ in terms of the subject matter with which it is concerned. However, the designation of authority as ‘religious’ can also be taken to refer to the issuing body or source of this authority as religious: by basing authority on divine sources of legitimation, one can speak in the name of the divine.

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<sup>159</sup> On religion as just one unique type of otherwise ordinary discourses and practices, though “characterised by an orientation to speak of matters transcendent”, see Braun (2000), 10. See also the Introduction to this thesis and the discussion of Rüpke’s definition of religion.

<sup>160</sup> Humphreys (1975), 92.



Studies of religion in ancient Greece often make mention of religious authority in a negative sense – in terms of the lack thereof: that ancient Greece had no church, no official creed, has become a commonplace.<sup>161</sup> Beyond this explicit statement, which seeks to highlight the distinction of ancient Greek religion from Judeo-Christian contexts, scholars of Greek religion focus largely on authority in a formal context, on its institutional manifestations, and often without discussing the term or its definition in any depth: they frequently concentrate either on legislative power, or on religious expertise.<sup>162</sup> Briefly surveying these two approaches and their limits, despite their strengths, will help make clear why Lincoln’s concept of authority is useful, as it encourages concentration on “authority’s labile dynamics rather than its institutional incarnations”.<sup>163</sup>

The first strand of scholarship takes as its starting point bodies such as the Athenian Assembly or *demos*. It understands authority in a legal sense, as held by those who issue a regulation and subsequently enforce the penalty for potential transgression. They limit themselves primarily to discussion of authority which is religious in the first sense – as concerning religious subject matters. Albert Henrichs for example, reduces authority to the formal right to legislate in his study of (ritual) authority and the role of writing in Greek religion, thereby equating authority to power.<sup>164</sup> Recent work on Greek ritual which rethinks the epigraphic body of ‘sacred laws’ and questions the conceptualization of this category, also largely approaches authority as a prescriptive power, as that which formally prescribes a religious regulation or norm.<sup>165</sup> A

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<sup>161</sup> See e.g. Price (1999), 3; Garland (1984), 75; Mikalson (2010a), 5; Bremmer (1999a), 6; Parker (2011), 1; Osborne (2015), 17. As Harrison (2015), 168 puts it, “new generations of students, without the same familiarity with organized religion as a point of reference, can seem perplexed now by modern scholars’ repetition of the ‘negative catechism’.” For a critical view of the approach which eagerly attempts to distance Greek religion from any Christianising influences, see Versnel (2011), 540-543.

<sup>162</sup> Important exceptions to this lack of explicit discussion are discussed below: Garland (1984); Parker (2011) and Mikalson (2016).

<sup>163</sup> Lincoln (1994), 2.

<sup>164</sup> Henrichs (2003), 42.

<sup>165</sup> See Harris (2015a), 60. Cf. also Petrovic and Petrovic (2014). However, Chaniotis (2009); Carbon and Pirenne-Delforge (2017) and in particular Mikalson (2016) do expand this limited understanding of authority by focusing not only on who issues the ‘sacred law’ or regulation, but rather who issues the *content* of the regulation, i.e. who prescribes the ritual action itself.

second approach is taken by those scholars who concentrate their attention on religious expertise, as held by religious experts or specialists.<sup>166</sup> James Rives, for instance, discusses ‘authority’ as one of three major problematic topics which the study of the concept of religion in the Graeco-Roman world encounters and understands the term as referring to “people with special authority in matters pertaining to the divine”.<sup>167</sup> Differentiation is often made here between those who hold religious authority through official offices, such as priests (‘executive authorities’), or unofficial roles (‘epistemic authorities’) – in which authority is considered dependent on charisma or knowledge, as is the case for seers and oracle expounders such as *manteis* and *chresmologoi*, for example.<sup>168</sup> However, such approaches, whilst sound in and of themselves, cannot be said to be complete or exhaustive.

There are, however, a few studies which deal more explicitly and rigorously with the concept of religious authority in ancient Greece, and which deserve more attention. Robert Garland’s 1984 article on ‘Religious Authority in Archaic and Classical Greece’ is an investigation of “who has the right in the Athenian state to act authoritatively both in the name of, and in matters of, religion.”<sup>169</sup> Garland argues that religious authority is pluralistic, not held by any single individual or body, but rather by a number of ‘associations’, which hold power in close interrelationship. His list of such associations includes the *demos* and its magistrates, as well as oracles, but the majority is made up of people who are religious officials: priests, religious experts such as *exegetai*, *manteis* and *chresmogoloi*, and religious assistants (*epimeletai*, *epistatai* and *hieropoioi*). Garland’s discussion includes a catalogue of religious officials.<sup>170</sup> He thus understands authority as conveyed primarily through the roles people hold, whether official or not: the authority to command regarding divine matters is held by groups of individuals,

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<sup>166</sup> E.g. Rüpke (1996); Trampedach (2008); Flower (2008) who looks at the seer; Beerden (2013), 137 focuses only on divination and therefore recognizes only the *homo divinans* as bearer of religious authority in Greece, as carrying “personal authority”. Bowden (2003), 256-274 and Dillery (2005) investigate *chresmologoi* and *manteis*.

<sup>167</sup> (Rives, 2007), 43.

<sup>168</sup> Garland (1984) 120; Flower (2008), 58-65; Beerden (2013), 64-66. Of course, this is not the sole way in which specialists are differentiated: see e.g. Flower (2008), 63 or Rüpke (1996), classifying specialists on the basis of their position within the social system of his or her religion.

<sup>169</sup> Garland, (1984), 75. It is also reprinted in a shorter version in Beard and North (1990), 73-91.

<sup>170</sup> Garland (1984), 83-118.

who had to act in consultation with each other. The exception to this, and also the most important expression of religious authority in theory (though in practice it is limited by a “lack of initiative”), is oracular divination.<sup>171</sup> Interestingly though, Garland discusses oracular divination also in terms of a *role* of authority, namely the role of the god. By doing so he does not examine the source produced, i.e. the oracular pronouncements themselves, nor the – often debated – question of their interpretation.<sup>172</sup> The “ultimate source of religious authority (...) was the god himself”, “the *patrios exegetes*”.<sup>173</sup> Garland thus understands religious authority as held by people, or a god, in their fulfilment of a role, focusing on quite concrete and tangible expressions of authority. He sees it as the “harmonious balance of power” of different “corporations”, looking at it from an institutionalised point of view and focusing on the more concrete and tangible bodies which may hold religious authority.<sup>174</sup>

Jon Mikalson’s recent book *New Aspects of Religion in Ancient Athens: Honors, Authorities, Esthetics, and Society*, is similarly concerned with authority in Greek religion, as it examines “why the Athenians did what they did in religion”.<sup>175</sup> Mikalson focuses on the epigraphic evidence of Athens in the classical and Hellenistic periods, including epigraphical body of sources known as ‘sacred laws’, and analyses firstly the authorities on the basis of which religious acts were performed. His “four major determinants of religious actions”, or “authorities” are *ta patria*, *nomoi*, *psephismata* and oracles.<sup>176</sup> Mikalson’s is an excellent study of how ‘sacred law’ functions and of the authorities which come into play in these sources. However, his starting point, which is largely limited to epigraphic evidence, and his focus, which is explicitly on religious practice,

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<sup>171</sup> Garland (1984), 81.

<sup>172</sup> The picture is particularly more complex in cases where one deals not with evidence for the actual consultation of oracles, but with the re-use and re-contextualisation of texts considered to be oracular: see Chapter Two.

<sup>173</sup> Garland (1984), 118.

<sup>174</sup> Garland (1984), 120. Others similarly assign religious authority to specialists: see for example Laughy (2010), 1-10, though focusing on religious authority in the archaic period and predominantly in ritual, who argues priests hold the power and control over ancestral customs and oracles. Price (1999), 67-88 takes a similar approach.

<sup>175</sup> Mikalson (2016), 2.

<sup>176</sup> Mikalson (2016), 3. They therefore mirror the ‘stratigraphical layers’ of ritual norms which Chaniotis identifies in a similar, if narrower, study of authority in the epigraphic body of ‘sacred laws’: cf. Chaniotis (2009).

mutually re-inforce a narrow interpretation of religion as ritual, as action.<sup>177</sup> As such, it differs markedly from the present study, and should be considered complementary rather than overlapping.

Another study which also discusses the notion of religious authority in more depth, and which builds further upon Garland's work, is Robert Parker's chapter on 'Religion without a Church: Religious Authority in Greece' in his *On Greek Religion* (2011). Parker, like Garland, considers both facets of the concept, taking authority to be 'religious' with regard to both source and subject matter: he looks at "who took decisions about religious matters" but also at "on what basis were such decisions taken".<sup>178</sup> Parker similarly recognises the scattered nature of religious authority, but while Garland places experts to the fore, Parker awards prime place to the *polis* and its Assembly as "legitimizing and mediating religious activity", that is holding religious authority.<sup>179</sup> He emphasises that priests are mediators, whose role is only advisory and whose tasks as such even lack exclusivity.<sup>180</sup> Oracles too he sees as side-lined by their lack of a mechanism of force – oracular pronouncement can usually only take place following a decision to consult the oracle.<sup>181</sup> Subsequently it is the body behind this decision – the Assembly and its *demos* – which are awarded more explicit and higher significance by Parker. The central role of the *demos* in the organisation and regulation of religious actions, rituals and discourses has of course long been recognised, but it has been discussed ever more explicitly since the formulation of the 'polis religion' approach by Sourvinou-Inwood.<sup>182</sup> Parker sees the Assembly as holding the power of actual decision-making on religious matters. It is the Assembly and the Council that pass the body of laws and decrees referred to traditionally as 'sacred laws'; and

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<sup>177</sup> Mikalson says he takes religion as "the gods and goddesses and heroes for whom the Athenians built altars and sanctuaries and to whom they actually sacrificed and prayed, and the beliefs, rituals, and practices associated with these deities" (11). While this seems to include beliefs and matters beyond actions, appointing the deities who crop up in ritual practice as his starting point means that his study is focused largely on this aspect of religion. For a further consideration of the ritual/belief debate, see the references in n. 66 above.

<sup>178</sup> Parker (2011), 45-46.

<sup>179</sup> Parker (2011), 59.

<sup>180</sup> See for example the role of archons and other magistrates in conducting sacrifices: Parker (2011), 54.

<sup>181</sup> Parker (2011), 41.

<sup>182</sup> Sourvinou-Inwood (2000a) and (2000b). See (Parker 2011), 58-61 for defence of Sourvinou-Inwood's approach in regards to the role of the state in religion.

they are dealt with exactly in the same way as any other laws – the only element which makes them sacred is that they deal with religious regulations (i.e. that their subject matter is religious). Members of the *demos* fill the seats in the law courts as judges, and deliver verdicts in cases concerning religious crimes, such as impiety and sacrilege. Therefore, it is the citizen body of Athens then who hold significant religious authority, according to Parker.

Parker and Garland both acknowledge that religious authority is diffuse and abstruse, which is connected to the nature of Greek religion, in particular its embeddedness.<sup>183</sup> Embeddedness is used to evoke the way in which ancient Greek religion is inseparable from the social structures of ancient Greek society, how “it was a social, practical, everyday thing”.<sup>184</sup> Emily Kearns has taken embeddedness as an explanation for the fact that the language of authority in Greek religion is less explicit: she argues that in lieu of more explicit, dogmatic creeds, “the structures of religion itself convince by virtue of their deep embeddedness in society, their seeming inevitability”.<sup>185</sup> Yet recent critics of the term have pointed out the dangers resulting from over-reliance on such an idea of embeddedness: not only does it give the impression that religion in the ancient world is a descriptive, rather than a redescriptive, concept, it also does not necessarily help explain how shared religious ideas originate, how they are developed, and how they change.<sup>186</sup> As an explanation in and of itself for a diffused religious authority, the term is not so helpful. Parker and Garland, as we have seen, may place different emphases, but they also both recognise the Assembly and *demos* (on legislative matters) and religious experts and specialists (in matters of religious practice and cult) as holders of religious authority. The significance of these entities and the authority located within them is indeed indubitable; however, this does not present the full picture. These entities constitute only one aspect of

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<sup>183</sup> On the term embeddedness and Greek religion, see Eidinow (2015), who redefines the well-known concept as a relational, or network, model of embeddedness.

<sup>184</sup> Parker (1986), 265, who instigated the use of the term in a social context specifically, though it has since been expanded to include all aspects of life: e.g. Price (1999), 3.

<sup>185</sup> Kearns (1995), 521.

<sup>186</sup> For the first type of objection see Nongbri (2008); the second see Eidinow (2015a) and Eidinow (2016), 207-208.

religious authority: its more obvious, formal locus.<sup>187</sup> This approach implies authority is a fixed phenomenon, which can be held by different bodies and individuals. However, authority – the performance of an act or speech act which exerts a force on its hearers, based on a particular form of legitimacy – is not as simple or fixed a phenomenon as this prevailing focus on institutions, offices and roles might suggest. Taking authority as a constructed entity and “an aspect of discourse”, as Lincoln asserts, one has to also examine *how* claims of religious authority are constructed, by whom, and on what basis.<sup>188</sup> Religious authority is not simply something to be held by individuals or institutions, but is rather a dynamic process, one which is constructed and can be contested.<sup>189</sup> Parker goes further than Garland by at least recognising that religious authority encompasses more than merely formal legislative power or the power of expertise, as he asks the question of “what influence individuals other than priests and priestly groups might have had over the Assembly”.<sup>190</sup> He thereby does acknowledge authority is not only a question of power (performed), but influence and legitimacy (created). Parker therefore poses the right question, though his answer, which mentions religious specialists and also politicians, is brief and does not provide a full examination of the evidence.

In conclusion, we can build up a picture of how this process of the construction of authority may work, and thereby also a toolkit and methodology for how this process may be analysed. As we have seen, religious authority in Greece is diffused. How one might make sense in human society of the power of the gods, how to decipher, understand, interpret and apply divine will, is a complex affair. We have identified particular sites of religious authority in classical Athens, most importantly the Assembly and the council, as well as the judges elected from the *demos*: they make legislative and judicial decisions concerning religious matters. These decisions can take into account advice from religious specialists, whose knowledge and expertise form

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<sup>187</sup> The *extent* of this authority of the Assembly, and polis, is less indubitable. It is the subject of a debate currently taking place between those who subscribe to the polis religion model and recently-emerged critiques of this model, as discussed in the introduction.

<sup>188</sup> Lincoln (1994), 2.

<sup>189</sup> In Nietzsche’s words, there is “no doer behind the deed”: Nietzsche (1994 [1887]), 26.

<sup>190</sup> Parker (2011), 46. Cf. also Parker (2005a), 89-115.

another site of religious authority. These specialists may in particular influence the actions which make up the ritual worship of the gods.<sup>191</sup> Yet they can also be considered authoritative with regard to a much wider range of topics: the Exegetai can, for example, help interpret Draco's laws of homicide and advise on the dangers of pollution after a murder, as the speech *Against Evergus and Mnesibulus* demonstrates ([Dem.] 47.68-73). However, if one understands authority as a constructed-and-contested process, one has to go further than the *demos* and religious experts to look at how religious authority may be constructed. It is the speakers in the Assembly and law courts who make use of, and construct, authoritative discourse which has to appeal to and persuade their audience, which influence religious decision-making in the *polis*. The speeches of the Attic orators provide insight into this, as documentation for such decision-making processes, both in the Assembly and the law courts of classical Athens. One could imagine laws, oracles, oaths and dreams – sources of religious authority – as the scattered blocks found at an archaeological site. The speeches show us how these blocks were fitted together to make a whole building. How can speakers construct and use religious discourses, and say what they do about the divine, its relation to the mortal sphere, and the human experience of negotiating this relationship? What methods and sources do they make use of to speak authoritatively about the gods? How do sources of evidence they produce – oaths, laws, poetry, oracles and dreams – function? What are the roles of traditional claims to authority: of τὰ πάτρια (ancestral customs), and τὰ νομιζόμενα (customary practices)?<sup>192</sup> It is questions such as these which this thesis aims to address in the ensuing chapters. Oratory can serve as evidence for the construction of religious authority in classical Athens, demonstrating both how sources of religious authority can be deployed in public speech and how religious authority functions with regard to other authorities. This chapter has also illustrated how religious authority is differentiated from religion as persuasion, or religious argumentation. It is concerned not merely with what is said about the divine and how this is used to construct arguments, but how it is possible to say what is said, in the everyday negotiation of the social and political structures

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<sup>191</sup> See [Dem.] 59.80-86, 116-117.

<sup>192</sup> On the authority of these two concepts, see Mikalson (2016).

which make up the human world with the sphere of the divine. As such, this thesis does not aim to examine religion as a rhetorical tool in oratory, but oratory as a source for the study of Athenian religion.



## Chapter Two: Oracles

In the previous chapter, this investigation began with an oracle story as recounted by Lykourgos (Lyc. 1.93). Oracles, and divination more generally, provided the ancient Greeks with the most direct indication of the will of their gods. That this divine will was the ultimate source of authority by which people led their lives was a principle practically beyond doubt or question. How such a belief acted out in practice, however, is what keeps essentially all scholars of ancient Greek religion busy today. Oracular divination was the most prestigious form of divination in the classical period. The sanctuary of Apollo at Delphi was the seat of the oracle whose workings and renown are best-described in our sources: here the Pythia, Apollo's priestess, gave responses to pilgrims from across the Greek world.<sup>193</sup> Another oracle of note was located in Dodona, in northern Greece, where messages from Zeus (and his companion Dione) could be obtained, while smaller oracles could be found for example at Didyma and Claros.<sup>194</sup> In the speeches of the Attic orators, oracles are few and far between. Only six orations quote or discuss oracular pronouncements in detail: three of these come from the Demosthenic corpus (Dem. 19.297; 21.51; [Dem.]43.66), the others from Aeschines' *Against Ktesiphon* (Aeschin. 3.107, 130), Dinarchus' *Against Demosthenes* (Din. 1.78, 98) and Lykourgos' *Against Leokrates* (Lyc. 1.83-88, 93, 98-101, 105-107). A few other orations make references to oracles in passing, though without quotation or any serious discussion of the oracle's content: Demosthenes' speech *On the Crown* mentions that his attribution of good fortune to the city of Athens is corroborated by an oracle from Dodona (Dem. 18.253), while in Hyperides' *In Defence of Euxenippus* the speaker notes in passing an oracle once ordered the Athenians to present offerings to the cult of Dione at Dodona (Hyp. 4.24).<sup>195</sup> This chapter centres on the six orations which discuss oracles properly.

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<sup>193</sup> On the workings of oracular consultation at Delphi, see Bowden (2005); Beerden (2013); Maurizio (1997); Morgan (1989); Raphals (2013).

<sup>194</sup> On Dodona, see Parke (1967); Eidinow (2007). On the less well-known oracles of Didyma and Claros, see Iles Johnston (2008), 76-108.

<sup>195</sup> Oracles are also mentioned in two of Isocrates' speeches: in *Archidamus*, the Spartan king, in whose name the speech is written, recounts how the descendants of Herakles came to rule over Sparta and Messene, thereby twice consulting the oracle at Delphi (Isoc. 6.17, 23, 31), while in *Helen* Isocrates mentions her parents planned to consult

Although the group of oracles found in oratory is modest in number, it is worth examining in depth. As the most obvious source of religious authority, the role oracles play in the trials of the law courts is a suitable starting place for a study of religion in Athenian public discourse.<sup>196</sup> The relative scarceness of oracle quotations has been seen by some to indicate the negligible role played by divination in public political and legal decision-making - contrasted to the more widely recognised importance of divination in private everyday life.<sup>197</sup> This chapter hopes to add to this debate by taking a closer look at the treatment of oracles in the speeches of the orators and by taking these oracular quotations seriously, despite their rarity. It will examine their form, function and type and look in particular at the way in which different oracles are assigned authority in different ways.

Furthermore, this analysis will not only examine how oracles could be talked about in the public setting of the law courts but will also contribute to our understanding of oracles and their role in classical Athenian society in general. The realities of the role of oracular consultation in political and legal decision-making remain mysterious, as we try to make sense of an apparent dichotomy in our body of evidence regarding how oracular consultation functioned and what kind of oracular responses people could receive. On the one hand we have the cryptic, inspired oracles and 'mantic narratives' found in literary sources, such as Herodotus' *Histories* and Greek tragedy. These are often ambiguous, require interpretation, and often result in misinterpretation.<sup>198</sup> An example is the wooden wall oracle, debated by the Athenians on the eve of the Persians' invasion of Greece in 481 BCE, or so Herodotus narrates (Hdt. 7.139-144).

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the Pythian priestesses at Delphi regarding their daughter's future (Isoc. 10.19). The epideictic nature of these speeches puts them outside this thesis' remit.

<sup>196</sup> The six speeches which quote oracles are all forensic. Evidence suggests oracles were discussed in the Assembly, possibly regularly, yet the evidence is relatively sparse: Thucydides (e.g. 1.118; 2.17.1-2), Herodotus (7.139-143) and Aristophanes (e.g. *Peace* 1043-1120) are diverse sources for the role of oracles in the Assembly: see Parker (2005a), 107-113; Bowden (2003), 270-274; for a different view, see Bonnechère (2013).

<sup>197</sup> Mikalson (1983), 48; Harris (2009), 155-156. But contra Bonnechère (2010a), 156-158 who recognises this distinction can be moderated.

<sup>198</sup> See also, for example, Aristoph. *Knights* 119-143. While Herodotean oracles are often ambiguous and cryptic, the oracles mentioned by Thucydides are not described in enough detail to know their content or form: see e.g. Thuc. 8.1.1.

Later writers such as Plutarch rely heavily on these literary sources for their presentation of the oracle, and thus corroborate this view of a Delphic Pythia who could produce cryptic hexameter verses on demand.<sup>199</sup> On the other hand we have epigraphic sources which present the oracle rather as a randomising device and a technical mechanism, with less room for inspired prophecy.<sup>200</sup> A famous example is the Sacred Orgas decree from 352/1 BCE, which records the Athenian Assembly's decision to consult the oracle at Delphi about whether or not a piece of land can be cultivated, or should be considered sacred and thus left untilld (IG II<sup>3</sup> 1 292).<sup>201</sup> Here the Athenians ask the Pythia at Delphi to choose between two vases, each containing one possible answer to the question. While the Pythia's selection of vases would still be considered inspired, this inspiration is not visible here. The role of the Pythia is more limited and the answer received is direct and straightforward. As we will see, oracles in oratory do not all neatly fit into one of these two categories, which complicates the picture we might otherwise construct of the role of oracles in Athenian public life.

Looking at the six speeches in which oracles are referenced, a marked difference can be seen between those in Lykourgos' speech and all the rest quoted by the other orators (Demosthenes, Aeschines and Dinarchus). This distinction is visible on many levels – type of oracle, its function and meaning – but most obviously starts with a difference in the format of presentation: Demosthenes, Dinarchus and Aeschines in their speeches present oracles as official depositions of evidence, read out by the clerk of the court (*grammateus*), while Lykourgos reads his oracles out himself. He presents them orally as part of the narrative of his speech. This is a unique and strikingly different presentation of oracles, which this chapter argues affects and contributes to the way in which these oracles are presented, in particular the type of authority which they are assigned.

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<sup>199</sup> See Bowden (2005), 33-38.

<sup>200</sup> See Rhodes and Osborne (2003), 58. For an analysis of the changes in the functioning of oracles from the Classical to the Roman Imperial period, see Bowden (2013).

<sup>201</sup> On this inscription see below in this chapter.

Not striking or revealing enough to receive much attention from researchers of Greek religion, while not frequent enough to arouse sustained interest in scholars of oratory and rhetoric, these oracles have not drawn the focus they deserve.<sup>202</sup> Sarah Iles Johnston in her recent *Ancient Greek Divination* (2008) does not mention any of the oracles in oratory, while Kim Beerden's *Worlds Full of Signs* (2013) awards only a few lines to the role of oracular divination in legal and political speeches, mentioning no specific ones.<sup>203</sup> In his study of *Classical Athens and the Delphic Oracle* (2005), Hugh Bowden mentions the two of the Demosthenic speeches which reference oracles from Delphi, as Dodona lies outside the scope of his book, though the Delphic oracle quoted by Aeschines (3.107-113) is left out.<sup>204</sup> Gunther Martin's *Divine Talk* (2009) does discuss the oracles found in oratory, yet the attention he gives to the different ones varies significantly. Interested primarily in religious argumentation and therefore the persuasive function of oracles, Martin completely ignores both the question of how these oracles are presented and whence they may have come, and also what they tell us about divination more widely.<sup>205</sup> Furthermore, most of the scholarship on these oracles takes for granted the authenticity of the documents included in the manuscripts which purport to be the oracles which litigants quoted. As this chapter will argue in detail, the authenticity of some of these should be questioned, significantly changing the analysis of these oracles. There has essentially been no systematic and considered study of the complete collection of oracles found in our sources for oratory, an omission this thesis aims to rectify.

This chapter will first present the oracles and the court cases in which these are discussed. It will start by examining the three Demosthenic orations (*On the False Embassy*, *Against Meidias* and *Against Macartatus*) as well as Dinarchus' *Against Demosthenes* and Aeschines' *Against Ktesiphon*. Analysis of not only the form, content and function of each oracle but also the context

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<sup>202</sup> Oracles are not discussed in studies of Athenian law, such as Todd (1993) or Gagarin and Cohen (2005); nor in studies of rhetoric and its uses: see for example Usher (1999) and Ober (2008). For studies of religion, see the references in text.

<sup>203</sup> Iles Johnston (2008); Kim Beerden (2013), 34.

<sup>204</sup> Bowden (2005), 55-58.

<sup>205</sup> Martin (2009). King (1955), an earlier study of religious argumentation in oratory, mentions only two oracles.

in which these were quoted – the wider religious elements of the speech – will allow for a more nuanced and complete look at why litigants in these particular trials make reference to oracles. The second section of this chapter will bring these different oracles into debate with each other, by comparing them and analysing their similarities and differences. It will argue that these oracles are presented as sources of authority parallel to laws: they are normative in nature and have a general applicability. They are subsequently employed by litigants in their speeches to make very specific points, usually about their opponents. In addition, this section will examine the question of these oracles' origins. As all are presented as deposition of evidence, particular attention will be paid to the mechanics of evidence production and presentation, as well as to the authenticity of the documents inserted in these speeches. Thirdly, this chapter will examine Lykourgos' speech *Against Leokrates*. After examination of the oracles he presents and their specific functions in the speech, this section will suggest the Lykourgan oracles differ significantly from the others not only in format and presentation, but also in function and in the authority which they are assigned. It will argue they are more similar to Herodotean mantic narratives than the law-like oracles usually found in oratory: Lykourgos employs his oracles as vehicles for statements which require greater than human authority, as he uses them to say something about divine will. Furthermore, the way in which he presents oracle stories emphasises his own role as interpreter of these divine signs. In sum, this chapter will return to the question of what this analysis tells us about the construction of religious authority in fourth-century Athenian public discourse. It contends that the choice of different media – oral vs written, as part of the narrative vs as deposition – impacts the way in which these pieces of evidence are utilized and affects the authority these oracles are assigned. Lastly, it will also address the wider significance of this analysis for our understanding of the role of oracular divination in Athenian society, arguing that instead of seeing a dichotomy between literary oracles and technical divination, the evidence from oratory provides an illustration of the flexibility and variety of ways in which oracular divination could be understood, used and rhetorically exploited in fourth-century Athens.

## 2.1 Oracles as depositions of evidence: Demosthenes, Dinarchus, Aeschines

### *A divine warning: the oracle in Dem. 19 and Din. 1*

A first oracle appears in Demosthenes' *On the False Embassy*. The speech was delivered at a trial in 343 BCE, which took place amidst rising political tensions in Athens following the growing power and belligerency of Philip, king of Macedon. Philip's continued expansion of control into northern and then central Greece had brought him into conflict with Athens, especially after Philip seized Amphipolis in 357 and captured Olynthos in 348 BCE. In 347, Athens sent an embassy of ten men, which included the *rhetors* Demosthenes and Aeschines, to negotiate a peace treaty with Philip. Upon their return and after multiple discussions in the Assembly a peace was agreed, known as the Peace of Philokrates. A second embassy, of the same ten men, was again sent to Macedon to receive the oaths from Philip: it was customary that each party of a treaty swore to uphold it in the presence of the other (Aeschin. 2.82). The Peace turned out disastrously for Athens: it did not stop Philip from expanding his power by seizing control of Phokis, an ally of Athens, while Athens itself did not recover control of any of its earlier territories through the treaty. Not long after these events, Demosthenes accused Aeschines of accepting bribes from Philip, blaming him for the failure of the peace treaty. He charged him with misconduct at his *euthynai*, the process of examination which ambassadors, like other official office holders, had to undergo.<sup>206</sup> This resulted in a trial, after a delay, in 343 BCE: alongside Demosthenes' prosecution oration (Dem.19), Aeschines' defence speech has also been preserved (Aeschin. 2).<sup>207</sup> Aeschines was acquitted by a narrow margin, although the antagonism between the two continued, eventually coming to a head in another court case years later in 330 BCE (preserved as Dem. 18 and Aeschin. 3).<sup>208</sup>

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<sup>206</sup> On this procedure, described in the *Ath. Pol.* 48.4-5, see Hansen (1991), 222-224.

<sup>207</sup> The delay was partly due to the fact that one of the three accusers alongside Demosthenes, Timarchus, was subsequently successfully prosecuted by Aeschines on a different offence: cf. Aeschin. 1.

<sup>208</sup> On the political background, see the introduction to the commentary of MacDowell (2000), 1-22; cf. also Worthington (2012), 183-237. On the rivalry between Aeschines and Demosthenes see Harris (1995); MacDowell (2009), 314-342, 382-397. On the speech itself, see MacDowell (2000) and Yunis (2005).

The oracle emerges towards the end of the speech as Demosthenes mounts an attack on Eubulus, an influential supporter of Aeschines who was to speak in court in support of the defendant (Aeschin. 2.184). Demosthenes criticises Eubulus for having prosecuted men for financial misdemeanours which, he argues, are insignificant compared to Aeschines' treasonous crimes (Dem. 19.290-302). He quotes an oracle:

In courts of justice no man to this day has ever been superior to you the people, or to the laws, or to the oaths. Then do not allow him [Eubulus] to do that now. To demonstrate that you must guard suitably against this rather than be trusting, I will read to you an oracle of the gods, who keep the city safe much more than its leaders do. Read the oracles.

*ORACLES (not preserved in manuscript)*

Men of Athens, you hear the warnings of the gods (τῶν θεῶν οἳ ὑμῖν προλέγουσιν). If they ordained these things (ταῦτ' ἀνηγήκασιν) to you in time of war, they tell you beware of your generals, for generals are the leaders of warfare; if in time of peace, of the men in charge of the state, for they are your leaders, those men you obey, by them it is feared you may be misled. It says in the oracle to keep the city together, so all may be of one mind and may not give joy to the enemy (Dem. 19.297-298).

Demosthenes introduces the oracle as an official deposition of evidence, which means he orders the clerk of the court to read it out: (λέγε τὰς μαντείας: "read out the oracles"). Litigants in Athenian court cases had to present the evidence they wanted to build their case upon at the pre-trial hearing (the *anakrisis* for public suits, the *diaita* for most private charges), where these documents would then be sealed in an *ekhinos*, a vase.<sup>209</sup> During the trial the clerk of the court would fetch the documents one by one out of the vase and read them out at the appointed times. The manuscripts of this speech record that a document was at this point read out, but the document itself has not been preserved, as is often the case too for other types of

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<sup>209</sup> Canevaro (2013), 1. See also Thür (2005).

documentation presented as depositions of evidence, such as witness statements, decrees and laws, letters and even curses.<sup>210</sup>

After having the oracle read out here, Demosthenes resumes his speech by paraphrasing and explicating it. He describes it as a “warning” from the gods and presents it as an order, saying they ordain (ἀνηγήκασι) the people to beware of their leaders (Dem. 19.298). The oracle also orders that the city’s unity be preserved and the enemy kept in check. Demosthenes repeats this same sentiment again a few sentences later, saying: “but the oracle tells you to act so that the enemy shall not rejoice. Therefore, Zeus, Dione, all the gods, exhort you to punish with one mind those who have provided service to your enemies” (Dem. 19.299). The oracular pronouncement quoted by Demosthenes does not contain any conditional element; it is rather a relatively straightforward, if general, command.

Demosthenes employs the oracle to argue that Aeschines and his supporters are untrustworthy and disloyal to the city of Athens. He accuses Aeschines and Eubulus, through his support of Aeschines, of corruption, contending Aeschines accepted bribes from Philip, which amounts to treason. The oracle appears to issue a general warning to be wary of one’s leaders, and Demosthenes asserts it should be applied to the particular situation at hand. The oracle functions as a general maxim and exhortation by the gods to act in a certain way, and it is Demosthenes’ interpretation of it and application to the present situation which gives it its specific place in the speech’s rhetoric, encouraging its audience to mistrust Aeschines and Eubulus. After making this point, Demosthenes further develops this argument from a different angle, stating in the following paragraphs, “it can be shown by mere human reasoning” (ἀπ’ ἀνθρωπίνου λογισμοῦ) too that prominent statesmen should not be allowed to fraternise with enemies of the state (Dem. 19.300). Demosthenes therefore proposes Eubulus has committed

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<sup>210</sup> Examples of most of these documents can be found in the *On the False Embassy* itself: for witness statements, see Dem. 19.32, decrees can be found for example at 47 and 276, letters at 38 and 51, and the curse which opens proceedings at the Assembly and Boule is read out at 70.



wrong first through an argument based on the oracle as a manifestation of divine reasoning, then through an argument based on “human reasoning”.

The specific mention of Zeus and his companion Dione, before expanding the reference to all the gods (Dem. 19.299), makes evident the oracle was considered to come from Zeus’ sanctuary at Dodona, one of the most important oracular sites in the classical Greek world. From the oracle’s presentation it appears not to be proclaimed for this particular occasion but rather a generic statement, which could be reapplied to multiple situations: Demosthenes suggests it can at times appertain to situations of peace, at other times to affairs of war.<sup>211</sup> There is no reference to the oracle’s origin: no context of oracular consultation is specified, no original recipient identified. Although Parke assumes the oracle’s response had been recently received, even suggesting ca. 346 BCE as a date, this is mere speculation – as is his proposal that the question asked was a general one, asking for the best course of action for Athens in the future.<sup>212</sup> That the oracle’s quotation in a speech does not have to correspond to a recent consultation is also shown by the use of the same oracle in another speech in a different context twenty years later, illustrating its re-applicability: it is used– twice – as evidence by Dinarchus in his speech *Against Demosthenes* (Din. 1.78, 98), delivered in 323 BCE, in which he prosecutes Demosthenes on a charge of bribery for his involvement in the Harpalus affair.<sup>213</sup> In this oration Dinarchus introduces the same oracle from Zeus of Dodona by making a comment about its longevity: “it has clearly long been ordering you to be on your guard against your leaders and advisers” (Din. 1.78). It is read out by the clerk together with another piece of evidence, a decree proposed by Demosthenes which, Dinarchus alleges, proves his cowardice and disregard for Athens’ plight

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<sup>211</sup> Cf. MacDowell (2000), 335.

<sup>212</sup> Parke (1967), 141. His dating is based on the assumptions that the oracle was recently awarded, that “the oracle was given after peace had been made”, and the fact Athens might have been unwilling to consult Delphi in the aftermath of the Peace of Philocrates of 346 BCE (based on their refusal to send delegates to the Pythian Games: Dem. 19.128). While this last statement is accurate, evidence is lacking for his two earlier assumptions.

<sup>213</sup> On this speech see the introduction in Worthington (1992). On the Harpalus affair, which culminated in 323 BCE in a trial of treason by way of bribery for Demosthenes and other leading Athenian politicians, see Worthington (1994), 307-330 and also Gottesman (2014), who analyses the arrival of Harpalus into Athens as a suppliant. Dinarchus’ speech is one of the prosecution’s orations against Demosthenes, though as a metic he could not deliver it himself. Hyperides’ *Against Demosthenes* is another surviving prosecution speech from this trial: see also Engels (1989), 298-312.

in its time of need. Dinarchus then quotes an oracle again later in the same speech and from his description this appears to be the same one.<sup>214</sup>

You will beware, as the gods have often cautioned you in oracles, against the leaders and counsellors of this type. Listen to the oracle itself. Read the oracle.

*ORACLE (not preserved in manuscript)*

How then shall we be of one mind, Athenians? (Din. 1.98-99).

As in Demosthenes' *On the False Embassy*, the oracle is presented as a sort of general maxim and provides generic advice. In both speeches it is employed to accuse one of the city's leading men of treason: Demosthenes first applies the warning to Aeschines, while Dinarchus then applies it to Demosthenes himself, twenty years later. Its sentiment is a common one: it is found too, for example, in Solon's poetry, as a warning against tyranny: "a city's destruction comes from powerful men, and through ignorance the people fall enslaved to a tyrant. If they lift a man up too high, it is not easy to restrain him afterwards; it is now that one should consider everything." (fr. 9.3-6 West). This fragment survives in Diodorus (9.20.2), who alleges it concerns Peisistratus, thereby giving the general warning a specific application just as the litigants do with the oracles. Furthermore, as Parker indicates, the idea one should be wary of one's leaders fits an apparent tradition of oracular responses linked to unseating leaders and kings.<sup>215</sup> Other Dodonian oracles are similar in type: in another speech, Demosthenes strengthens his attribution to the city of Athens of good fortune (τύχην ἀγαθὴν) by stating Zeus of Dodona has prophesied this too (Dem. 18.253).<sup>216</sup> In Dinarchus' and Demosthenes' speeches, the oracle is a universal message which can be quoted variedly and variously: it is

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<sup>214</sup> Having the same piece of evidence presented and read out by the clerk twice in one speech, in particular at such short interval, seems curious, though it is possible that first one part of the oracle was quoted (the part which warns against leaders) and later a second part was read out, or a particular part was repeated for emphasis (possibly the part which orders its audience to be of one mind and work together against its enemies), as happened occasionally with other types of documents (see e.g. the decree in Din. 1.79-80; the letter in Dem. 19.38, 40).

<sup>215</sup> Parker (2000), 100 discusses the legendary tales of oracles unseating unpopular kings in archaic times, as well as Plutarch's insistence that in Sparta a divinatory mechanism existed which every nine years could dethrone a king (Plut. *Agis* 11.3-6).

<sup>216</sup> ἐγὼ τὴν τῆς πόλεως τύχην ἀγαθὴν ἡγοῦμαι, καὶ ταῦθ' ὁρῶ καὶ τὸν Δία τὸν Δωδωναῖον ὑμῖν μαντευόμενον (...). On this type of oracle see Parker, (2000), 100-101; Parker (2005a), 108. Parke (1967) 139-142.

decontextualized in the sense that the moment of consultation is not wholly absent, and subsequently re-contextualised in a new context.

This quoted oracle's format as deposition of evidence, its attribution to Dodona and its non-specificity and re-applicability are all significant for the questions this chapter poses, regarding both the use of oracles in oratory and what this tells us about oracular divination in fourth-century Athens. Where did speakers such as Demosthenes and Dinarchus obtain the oracles they quote in their speeches? Does the fact this one comes from Dodona help explain its non-specific nature? Why did speakers quote oracles? How does the quotation of such an oracle in a law court affect the audience, and what does this tell us about the functioning and significance of oracular consultation? To allow for a fuller picture in answering these questions, it will be useful to first survey the remaining oracles discussed in oratory.

### ***Oracles and impiety in Demosthenes' Against Meidias***

In Demosthenes' speech *Against Meidias*, oracles from both Apollo at Delphi and Zeus at Dodona are quoted.<sup>217</sup> *Against Meidias* is a prosecution speech, reportedly delivered at a trial in 347/6 BCE.<sup>218</sup> This trial resulted from a quarrel between Demosthenes and Meidias, a fellow wealthy and politically prominent Athenian citizen.<sup>219</sup> In 348, Demosthenes had volunteered to act as chorus-master (*choregos*) at the Great Dionysia festival.<sup>220</sup> He alleges that Meidias attempted to prevent him and his chorus from winning the competition through a variety of underhand

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<sup>217</sup> We can assume this anyway, from Dem. 21.51: "your choruses and hymns to the god are sanctioned (...) also by the oracles, in all of which, whether given at Delphi or at Dodona, ..."

<sup>218</sup> On the speech and its dating see the introductions in MacDowell's commentary (1990) and in Harris' translation (2008).

<sup>219</sup> How longstanding the quarrel was, depends on how much one believes Demosthenes, who alleges that Meidias broke into his house when Demosthenes himself was still a young man fighting against his guardians for his inheritance: see Dem. 21. 78-9 and on the reading of this story with necessary suspicion, see Harris (2008), 75-76.

<sup>220</sup> A political reading of Demosthenes' motives for bringing the indictment, as a result of conflicting attitudes to foreign policy between the two men is generally dismissed, as the evidence is sparse: see Harris (2008), 76-77; MacDowell (1990), 11-13. Ober (1994) reads the speech in terms of class struggle, in the sense that he interprets Demosthenes' argumentative strategy as setting up an opposition between the aristocratic hubristic Meidias and ordinary citizens.

means and that Meidias' obstructive behaviour culminated in him punching Demosthenes in the face at the Dionysia itself, in front of the festival's audience (Dem. 21.13-18). Shortly after the festival, Demosthenes used the legal procedure of *probole* at a special meeting of the Assembly in the theatre to accuse Meidias of ἀδικεῖν περὶ τὴν ἑορτήν, "wrongdoing concerning the festival" (Dem. 21.1, 8-9).<sup>221</sup> The audience on that occasion voted against Meidias, yet this procedure had no actual legal consequences. Nearly two years later Demosthenes then brought a public charge against Meidias, and the two came to confront each other in a court of law: *Against Meidias* is the prosecution speech in this trial.

Two elements regarding the relationship between the text and the trial remain unclear. The first is the actual charge concerned. From Demosthenes' speech we know the charge brought against Meidias was a public, not private, one (25), but commentators are divided on what precisely the allegation was. Some have argued the procedure of *probole* covers both the initial vote in the Assembly and any subsequently resultant legal actions: the charge at the trial would then be the same as at the charge at the Assembly meeting, namely wrongdoing concerning the festival.<sup>222</sup> Others argue the actual trial counted as a separate legal procedure and the charge must therefore have been either a *graphe asebeias* (public indictment for impiety) or *graphe hybreos* (public indictment for *hybris*): Harris has recently convincingly expanded arguments in favour of the latter.<sup>223</sup> It is evident, in any case, that in his speech Demosthenes attempts to portray Meidias' actions both as *hybris* and *asebeia*. Depending on which perspective on the procedural elements one follows, these two notions either constitute charges or simply allegations.<sup>224</sup> Both terms are difficult to translate as they refer to multidimensional and multi-applicable concepts: *asebeia*, usually rendered as 'impiety', denotes behaviour offensive to a god

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<sup>221</sup> On the *probole* procedure see MacDowell (1978), 194-197.

<sup>222</sup> Most recently Martin (2009), 16; MacDowell (1990), 16-17; Rowe (1994). For an overview of earlier opinions on this issue, whether taking the same stance as these scholars here or that of Harris (see note below), see Rowe (1994), 55 n.3.

<sup>223</sup> Harris (2008), 79-81. See also Harris (1989). I agree with this interpretation based on Dem. 21.28, which presents as Demosthenes' legal choices either a private suit or a *graphe hybreos* – it is clear from the speech that he did not choose the former. Rowe (1994), taken an in-between position: he believes the trial was part of the *probole* but thinks the charge of 'wrongdoing against the festival' would have counted as an offence of *hybris*.

<sup>224</sup> Ober (1994), 91-92 recognises too either scenario could be possible.

or gods, covering a variety of actions, both those directly addressed to gods, as well as in the first place addressed to other humans.<sup>225</sup> *Hybris* is even more difficult to pin down: it is the charge used for injuries done to a person which are more serious than simple assault (*aikia*). This hierarchy in severity is seen in the procedures through which these offences are indicted, *aikēia* by private action (*dike*), whereas *hybris* requires a public process (*graphe*) (Dem. 54.1). Yet *hybris* is more complex a notion than simply aggravated assault: as Douglas Cairns puts it succinctly, *hybris* is “a way of going wrong about the honour of self and others”.<sup>226</sup> Different approaches to its definition mostly agree the term covers a wide range of actions and relates to two aspects: both the disposition of the offender, characterised as self-indulgent or undisciplined, and the consequence for the victim, as *hybristic* actions result in a sense of dishonour.<sup>227</sup> *Hybris* can be translated as insolent abuse or outrage. As these definitions make clear, both the allegations leveled at Meidias in the speech have a religious component to them: *asebeia* is in essence a religious offence, while *hybris* can be one too. *Against Meidias* is therefore an important speech for the study of religion in Attic oratory and the Athenian legal system.

Before proceeding to the oracles quoted in the speech, a second element lingering in uncertainty is whether the trial ever actually came to court. In his speech *Against Ktesiphon*, delivered over 15 years later, Aeschines claims Demosthenes “sold for thirty minae both the *hybris* against himself and the vote of condemnation that the people had passed against Meidias in the theatre of Dionysus” (Aeschin. 3.52). Despite later sources in antiquity as well as a few scholars more recently following this suggestion of Aeschines that Demosthenes reached a

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<sup>225</sup> How *asebeia* is defined is closely related to how one thinks it is conceptualized. For example, debates rage about whether *asebeia* was limited only to actions or could be ascribed to thoughts or beliefs too: see Delli Pizzi (2011); Bowden (2015); Gagné (2009). See also the introduction to this thesis, as well as Chapter Five which discusses other speeches concerned with impiety, such as Andocides’ *On the Mysteries* and Lysias’ *Against Andocides*.

<sup>225</sup> Cairns (1996), 32.

<sup>226</sup> Cairns (1996), 32.

<sup>227</sup> See for example MacDowell (1990), 20–23, going against Fisher (1976, 1979), who places as primary the dishonour inflicted on the victim, minimising thereby the disposition of the perpetrator. Harris (2008), 81 recognises two sides too but calls them a “subjective” (self-indulgent and over-energised *hybristes*) and “objective” aspect (shame and dishonour of victim). Cairns (1996) argues that the self-indulgent disposition of the perpetrator should be construed in wider comparative social terms, with reference to *time* (honour), as self-indulgence is necessarily “an incursion into the sphere of others’ honour” (32).

settlement with his opponent, and therefore that the trial never took place, most commentators of the speech agree now to a more sceptical approach to Aeschines' statement.<sup>228</sup> Believing the existence of a genuine prosecution speech testifies to the existence of a trial, they suggest Aeschines might simply be referring to the fact Demosthenes agreed to a small penalty (the 30 minae) for Meidias after his guilty verdict.<sup>229</sup> Whether or not the text preserved is a pre- or post-trial draft, one can consider it in substance similar to the oration performed at the trial.

As a speech concerning the religious offence of impiety, even if not as its primary concern, *Against Meidias* has received considerable attention for its religious content, which has recently been comprehensively and considerately surveyed and dissected by Martin in his *Divine Talk*.<sup>230</sup> Martin aims to examine how the religious components of the speech fit into Demosthenes' general rhetorical strategy. The most significant of these elements are the allegation of *asebeia* which Demosthenes makes against Meidias for mistreatment of a *choregos* during the Dionysia in the precinct of the god (Dem. 21.51-61); the denunciation of Meidias as impious, impure and a perjurer in the section concerning the story of Aristarchus, a man accused of murder (104-122); a comparison of the impious deeds of Alcibiades with those committed by Meidias (143-150); and the appeal to the gods as a wronged party (e.g. 126-127, and especially in the final sentences at 227). According to Martin, Demosthenes only introduces religious elements gradually in the speech, with the religious argumentation reaching a peak in Demosthenes' defence of Meidias' anticipated accusations of impiety in the section regarding Aristarchus.<sup>231</sup> Aristarchus was a young man accused of murdering Nicodemus, an opponent of Demosthenes, who had fled Athens. Demosthenes expects Meidias to accuse him of complicity in the murder, and as counter-attack he accuses Meidias of impious behaviour, (Dem. 21.104, 114-115, 120), and calls him polluted (114: μιὰρὸς) and a "defiled and shameless head" (117: ἡ μιὰρὰ καὶ ἀναιδὴς αὕτη κεφαλὴ). He claims Meidias swore a false oath and perjured himself (119). In the section

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<sup>228</sup> Demosthenes settled the case: see for example Plutarch, *Dem.* 12. Modern scholars: see e.g. Dover (1968), 172.

<sup>229</sup> Whether with bribe (Rubinstein (2000), 209) or not (MacDowell (1990), 28; Ober (1994), 91-92; Harris (2008), 84-85).

<sup>230</sup> Martin (2009), 15-48.

<sup>231</sup> Martin (2009), 37-47.

on Alcibiades, Demosthenes continues to employ religious considerations to decry Meidias, telling the audience it is not only not good (καλόν), but also not θεμιτὸν (morally right) and ὅσιον (in accordance with divine right) to award any kind of pardon to Meidias (Dem. 21.148).<sup>232</sup> At the end of the speech, Demosthenes makes a final plea which characterises Meidias' crime as impiety against the honour of the god (τοῦ θεοῦ χάριν περὶ οὗ τὴν ἑορτὴν ἀσεβῶν) and urges the judges to be guided in their decision both by what is *hosios* and what is just (ὀσίαν καὶ δικάϊαν) (Dem. 21.227). As Martin's analysis covers lots of ground, this short overview of the principal sections of the speech which discuss divine matters will suffice as contextualisation of the religious elements of the speech.

Martin understands religion primarily as a rhetorical tool. This colours his approach to religious elements, as his treatment of Demosthenes' impiety accusation illustrates. Martin suggests here that Demosthenes does not exploit the "argumentative potential" of this allegation, reading the merely supportive nature of religious argumentation (over arguments which rely on civic morality and political values) as a conscious and deliberate choice on the part of Demosthenes.<sup>233</sup> He sees the absence of talk about the gods' revenge for impiety, for example, as a "good opportunity he [Demosthenes] has just missed".<sup>234</sup> Similarly, Martin calls Demosthenes' presentation of Meidias' *hybris* as an offence against the god, rather than merely against himself, "underdeveloped", suggesting "it would have been possible for the litigant to claim that the god had been a victim of *hybris*".<sup>235</sup> Yet he does not take enough account of the rhetorical context and the believability of potential arguments' applicability to the particular facts of this case. Returning to the *asebeia* allegation, for example, it is clear the role of *choregos* is not typically seen as a religious function; therefore the *asebeia* allegation is rather

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<sup>232</sup> Cf. Martin (2009), 32.

<sup>233</sup> Martin (2009), 28.

<sup>234</sup> Martin (2009), 29.

<sup>235</sup> Martin (2009), 29. He does add in a footnote that a direct allegation of *hybris* against the god is rare in Greek sources, but this does not seem to stop him from presenting Demosthenes' inaction to do so as a choice, a deliberate decision against the use of religious argumentation. Cf. Fisher (1992), 47.

tendentious and weak, as MacDowell recognises, for example.<sup>236</sup> To labour the point more strongly and to bring the gods in any more than Demosthenes already does, or to intensify the allegation by mentioning the possibility of divine wrath and punishment for the city, would not be a compelling rhetorical strategy.

Martin regularly assigns purely an emphatic function to references to the divine, going even so far as to say, “the divine is an object by which to amplify the seriousness and outrageousness of specific acts”.<sup>237</sup> While this is one of the functions of religious argumentation, it is not its only one. Rather than merely *amplifying* the seriousness of acts, religious elements also award these acts another dimension: explicitly bringing in the gods frames Meidias’ actions as deeds which not only affect the divine by being general violations of society’s laws and agreed moral values, but also explicitly affect the gods by being directly offensive to them.

We can focus now on the foremost source of religious authority discussed in the oration – an element which Martin moreover does not treat in detail – namely, the quotation of oracles. The discussion of oracles comes early in the speech, as Demosthenes considers the significance of Meidias’ deeds:

Now if I had not been chorus-master, men of Athens, when I was treated this way by Meidias, one would have condemned his actions only for insolent abuse (ὕβριν). But, as it is, I think that if one were to condemn them for impiety too, that would be appropriate. You surely know that all your choruses and hymns to the god are sanctioned, not only by the laws (τοὺς νόμους) of the Dionysia, but also by the oracles, in all of which, whether given at Delphi or at Dodona, you will find an order to the city to establish choruses in accordance with ancestral custom (κατὰ τὰ πάτρια), to make streets smell of sacrifice, and to wear crowns. Please take and read the actual oracles:

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<sup>236</sup> MacDowell (1990), 18 argues that it is difficult to make the argument that punching a chorus master amounts to *asebeia*. He sees this as the reason why Demosthenes probably chose the *probole* procedure over a *graphe asebeias*.

<sup>237</sup> Martin (2009), 35. Martin also dichotomises the audience into a group of ‘believers’ and ‘non-believers’ with regard to Dem. 21, which is problematic: see 44, 48.



## ORACLES

*I proclaim to all the sons of Erechtheus, who in the city of Pandion  
dwell and conduct their festivals by ancestral rules,  
be mindful of Bacchus and along the wide avenues  
establish a thank offering of ripe crops to Bromius, all mingled together,  
and make the altars fragrant with sacrifice, covering your heads with crowns.  
Sacrifice for health and pray to Zeus the highest, to Heracles, to Apollo the protector; for good  
fortune to Apollo guardian of the streets, to Leto, to Artemis;  
and set up mixing bowls in the avenues and choruses, and put on crowns following the ancestral  
rules for all the Olympian gods and goddesses, raising high their right and left hands, and show  
gratitude.*

## ORACLES FROM DODONA

*To the people of Athens, the oracle of Zeus commands that since you have neglected the times of  
sacrifice and of sacred missions, nine chosen sacred envoys be sent and that these men promptly  
sacrifice with good omens to Zeus three oxen and for each ox three pigs, and an ox to Dione and  
set up a bronze table for the dedications that the Athenian people have dedicated.  
The oracle of Zeus commands the performance of sacrifices at Dodona to sovereign Dionysus, and  
to fill mixing bowls, and to establish dances, and to wear crown, both free and slaves, and to take  
rest for one day; to sacrifice an ox to Apollo the averter of evil and a white ox to Zeus, Protector  
of Wealth (Dem. 21. 51-53).*

As in the speech *On the False Embassy*, Demosthenes quotes oracles again as depositions of evidence. This time, the texts of oracles purporting to record these documents have been preserved in the manuscripts of the speech. Their authenticity, however, is questionable. Debates and differing opinions regarding the origin and genuineness of the many documents included in the speeches of the orators have circulated since the late nineteenth century, though recently Mirko Canevaro has provided an authoritative analysis of the issue. Based both on analysis of the stichometry of the manuscripts and on a thorough and systematic inspection

of the text of the documents on linguistic, stylistic and historical grounds, Canevaro has demonstrated that many of the laws, decrees and witness statements included in the speeches of the orators are later additions to the manuscript tradition, and that many of them should be considered forgeries, composed in the Hellenistic period or later.<sup>238</sup> Following the same methodology, Harris has examined the documents in the *Against Meidias*, arguing the stichometry shows that none of these were included in the *Urexemplar* of the speech.<sup>239</sup> Canevaro and Harris focus primarily on the laws, decrees and witness statements, but in passing they also discuss the oracles: Harris has persuasively asserted the two oracles in *Against Meidias* are post-classical creations, not only on account of the stichometry but also their use of Hellenistic vocabulary and strange blend of Attic, Ionic and Doric forms.<sup>240</sup> Analysis of this oracular quotation therefore has to be built only on the comments which Demosthenes makes about them in the body of the speech itself: his introduction to the oracles, given above, as well as what he says after quoting them:

The city has, men of Athens, many other good oracles besides these. Now what must you infer from these? That while they order you to make other sacrifices to the gods indicated in each oracle, they also order you to set up dances and to wear garlands according to ancestral tradition (κατὰ τὰ πάτρια), in addition to all the received oracles. Therefore it is clear that all the choruses formed and the chorus-masters on those days when we meet in competition, wear their crowns, according to these oracles, for your sake, both the man about to win and the one who will be last of all. Only during the victory celebrations does the victor wear a crown for himself. So when someone acts with insolent outrage (ὕβριζοντ') towards any of these choristers or chorus-masters,

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<sup>238</sup> Canevaro (2013).

<sup>239</sup> See Harris in Canevaro (2013), 209-236, esp. 211.

<sup>240</sup> See Harris (2008), 105-6. For example, the first oracle is in hexameters, employing the language of a type of pseudo-epic; while the second is superficially doricized. Mikalson (2016), 273-275 agrees. Contra MacDowell (1990), 270, who accepts the oracles as genuine, even if he agrees their lack of relevance to the speech mean they might not be the ones Demosthenes had read out; Martin (2009), 22 follows MacDowell in accepting their authenticity. Earlier editors mostly accepted the authenticity of the oracles: King (1901), 36; Goodwin (1906), 33; cf. also Fontenrose (1978), 187-188.

out of hatred, during the competition itself and in the precinct of the god, can we say that he has done anything other than commit impiety (ἄσεβεῖν)? (Dem. 21. 54-55)

Disregarding the inserted text of the oracles as later additions, what remains of the oracles is what Demosthenes himself says about them: he explains they sanction the choruses and hymns to the gods and “ordain the city (ἀνηρημένον τῇ πόλει) to establish choruses in accordance with ancestral custom, to make streets smell of sacrifice, and to wear crowns” (Dem. 21.51). In this function, Demosthenes compares them to the *nomoi*, the laws, about the Dionysia (τοὺς νόμους τοὺς περὶ τῶν Διονυσίων) (51). Just like the oracle quoted in Dem. 19, the oracles here contain no conditional element but are rather simple commands.

Demosthenes cites the oracles to make the point that Meidias’ actions should be seen not as simple *hybris*, but as impiety too. After having the clerk read the oracles out, Demosthenes explains their relevance and application to his case, as is the usual practice of litigants after presenting evidence. While it is unclear whether the oracles quoted would have referenced practices and sacrifices made at the Dionysia festival in particular, or whether the oracles would have been more general, Demosthenes in any case infers from them that the chorus and chorus-masters of the Dionysia wear their crowns as representatives of Athens, in honour of the gods: “it is clear that all the choruses formed and the chorus-masters on those days when we meet in competition wear their crowns, according to these oracles, for your sake” (Dem. 21.55). He attempts thereby to give his role as chorus-master a religious significance.<sup>241</sup> His description of the oracles refers only to choruses, so we may assume the oracular texts themselves did so too, yet in his explanation he goes on to mention *choregoi* too, bracketing these together with choruses.<sup>242</sup> In the subsequent section of the speech he similarly equates chorus-masters with choruses, as he discusses a law which awards special protection to

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<sup>241</sup> By stating they wear the crown “for your sake”, he is also accentuating the public dimension of the *choregos*’ role: earlier in the speech Demosthenes argues that committing *hybris* against an office holder such as a *thesmothetes* or *archon*, while he is performing this office, is punished by disenfranchisement: “Because the man who does that is using insolence (προσυβρίζει) also against the laws, and against the crown, which belongs to you all, and against the name of the city” (Dem. 21.32). Similarly, Demosthenes argues, offences made against *choregoi* whilst performing their duty should be considered more serious offences.

<sup>242</sup> Cf. Martin (2009), 23.

choristers during festivals (Dem 21.56-57). By analogy, Demosthenes argues, protection should be awarded to chorus-leaders too.<sup>243</sup> Demosthenes therefore quotes the oracles to amplify the severity of Meidias' actions against him: as chorus-master he himself was fulfilling a divine command and was part of a divine celebration, so Meidias' assault against him should be considered not only as *hybris* but as *asebeia* too: "Now if I had not been chorus-master, men of Athens, when I was treated this way by Meidias, one would have condemned his actions only for *hybris*. But, as it is, I think that if one were to condemn them for impiety (ἀσέβειαν) too, that would be appropriate" (51). The venue of Meidias' actions in the Theatre of Dionysus, in the precinct of the god (ἐν τῷ τοῦ θεοῦ ἱερῷ), further underscores the religious nature of this allegation too (55). By employing the oracles to add a charge of *asebeia* to the allegation of *hybris*, Demosthenes raises the stakes to present Meidias' actions as a specifically religious offence.

Martin has shown that the *choregia* is not often portrayed as a particularly sacred office or liturgy, the emphasis rather usually placed on the wealth required to perform it and on the civic virtue of the wealthy individual in undertaking it.<sup>244</sup> Demosthenes thus stretches the common conception of the chorus-master and plays up the sacred nature of the position he held at the festival throughout the speech, not only by placing emphasis on the crown worn (and thereby also connecting *choregoi* to the crown-wearing city officials who enjoyed a sacred status), but also on the clothes he wore: by calling these sacred (Dem. 21.16: ἱερά), he "insinuates that he has a priest-like standing".<sup>245</sup> The oracles are therefore part of a wider attempt to elevate Demosthenes' position as *choregos* to one which carries religious significance.<sup>246</sup>

Despite not knowing the exact content of the oracles which Demosthenes asks the clerk to read out, it is clear from his discussion of them that these oracular pronouncements are rather general in nature. They concern ritual acts: the performance of choruses and hymns, the order

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<sup>243</sup> Cf. MacDowell (1990), 275-277, who argues that this law likely concerned challenges to choristers' citizenship status, and that Demosthenes misrepresents this law to make it appear more relevant to his case.

<sup>244</sup> Martin (2009), 25-26. On the social value of the *choregos* see also Liddel (2007), 264-270.

<sup>245</sup> Martin (2009), 26. On the sacred status of crowned officials, see Martin (2009), 32-33.

<sup>246</sup> Cf. also Martin (2009), 27.

of sacrifices, and the wearing of crowns. Most likely they were a description of certain sacrifices which the god commanded be made, whether at particular festivals or in general. Cities such as Athens consulted oracular sanctuaries on a variety of issues, such as general welfare of the city, problems of leadership and organisation of society, responses to war and natural disasters, and the establishment of colonies.<sup>247</sup> However, the most common subject was cultic in nature and concerned the worship of the gods: the instigation, alteration or expansion of religious ritual, or matters concerning sacred sites. An inscription from the middle of the fourth century gives an example of a response to such a query:

The god said (ὁ θεὸς ἀνεῖλεν) that it was better and more profitable (λῶιον καὶ ἄμεινον εἶναι) for the demos of the Acharnians and the demos of the Athenians to build altars to Ares and Athena Areia, that the Acharnians and Athenians might act properly towards the gods (εὐσ[ε]βῶς τὰ πρὸς τοὺς θεούς) (SEG 21.519.4-10)<sup>248</sup>

From Demosthenes' description of the oracle in the *Against Meidias*, we might imagine the oracles he quoted would have been similar to these. In fact, the mention of ancestral tradition as the authority for some of the acts which the oracle prescribes (to wear garlands κατὰ τὰ πάτρια, Dem. 21.54) conforms to the epigraphic evidence for oracles.<sup>249</sup> These inscriptions, whose traditional appellation as 'sacred laws' has recently been called into question and are better referred to as 'ritual norms', often make reference to different authorities side by side,

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<sup>247</sup> For discussion of the topics and the difference in questions between individual and collective consultations, see Fontenrose (1978), 24-35; cf. also Bowden (2005), 110.

<sup>248</sup> The formulation of the question in terms of whether it is better to do one thing or another is common in the portrayal of the oracle in different sources, literary ones too: see for example the question asked by Lykourgos the Spartan lawgiver, as reported by Xenophon (Xen. *Lac.* 8.5). The remaining epigraphic evidence for public consultations regarding cultic matters from fifth- and fourth-century Athens is IG I<sup>3</sup> 7; IG I<sup>3</sup> 78; IG I<sup>3</sup> 137; IG II<sup>2</sup> 4969; IG II<sup>3</sup> 1 292; IG II<sup>2</sup> 333; IG II<sup>2</sup> 1933 and IG I<sup>3</sup> 131. This amounts to all the epigraphic evidence for consultations of the Delphic oracle in this time period. This correlation between subject matter and type of record should be understood in terms of publication practice: nearly all of these inscriptions mention the oracle merely in passing, as their aim is to set down and proclaim (new or changing) ritual practices, for which the oracle is the authority. Therefore, the oracle itself is not the *reason* why the inscription is being inscribed. This differs from later epigraphic practice: in the Roman period oracles are being inscribed especially in order to publicise the consultation and its answer: see Bowden (2013), 56-57.

<sup>249</sup> On the meaning of the κατὰ τὰ πάτρια clause, which is as significant and ill-defined as it is short and ubiquitous, see Mikalson (2016), 111 and also Harris (2015a), 77-79.

such as god and oracle and *πάτρια*.<sup>250</sup> Angelos Chaniotis has investigated these Greek inscriptions of cult regulations as compositions of different layers of ‘ritual norms’, which can be conceptualized as a stratigraphy. His recognition of the relationship between these norms appears to correspond too to what we find here in Demosthenes’ oracle quotation: *τὰ πάτρια*, or ancestral custom, appears on a different level to oracles or laws. It is the oracles which mention *τὰ πάτρια*, as they order specific actions – garland-wearing and dances – to be carried out *κατὰ τὰ πάτρια* (Dem. 21.51, 55).<sup>251</sup> As such, *τὰ πάτρια* appears to specify the content of rituals, while the oracles are instructions for the application of *τὰ πάτρια*.<sup>252</sup> Demosthenes’ reference to ‘ancestral custom’ in his description of an oracle concerning ritual practice is important as it makes his oracle quotation appear comparable to both the epigraphic recordings of oracles specifically, and inscribed sacred law in general.

Oracular consultations on religious matters, such as found in these epigraphic sources, should not be read in a narrowly religious way, however: it is not because the questions they pose were explicitly concerned with the gods that they were not also considered to be of importance socially, financially and politically.<sup>253</sup> The Sacred Orgas oracle demonstrates this clearly. Recorded on an inscription set up in Eleusis in 352/1 BCE (IG II<sup>3</sup> 1 292), it serves as the most

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<sup>250</sup> Questioning ‘sacred laws’, see Parker (2004). The appellation of ritual norms comes from Chaniotis (2009), further conceptualised and developed by the Collection of Greek Ritual Norms project, see for example Carbon and Pirenne-Delforge (2012). Mikalson (2016) provides an in-depth study of the authorities referenced in the epigraphic record of ritual norms.

<sup>251</sup> Dem. 21.51 mentions setting up of dances, while Dem. 21.55 states both dances and the wearing of garlands are to be carried out *κατὰ τὰ πάτρια*.

<sup>252</sup> Chaniotis (2009) recognizes the stratigraphic layers *patria*, *nomoi* and *psephismata*, which each correspond to different types of instructions. He calls the *patria*, together with *nomizomena*, the hard core of ritual norms, effectively containing the actual rules of the ritual, “without which they would not be effective and recognizable” (95). The *nomoi* on the other hand, are more concerned with the *performance* of ritual, and thereby contain instructions for the application of the *patria*, while *psephismata* appear to deal with potential variable elements of ritual: they are “stage directions” or “elements aimed at increasing a ritual’s efficacy” (102). Carbon and Pirenne-Delforge (2017) have built upon Chaniotis’ stratigraphy, for example by adding oracles as another layer. The portrayal of law, oracles and *patria* in Demosthenes’ *Against Meidias* here fits in with this stratigraphy of Chaniotis, in that the *patria* present core instructions of ritual, though one needs to add oracles to his category of laws in that they provide instructions which include *ta patria*.

<sup>253</sup> As Bowden (2005), 132 argues, the preponderance of religious content in oracular consultations can be taken as demonstrating that in all areas of decision-making the Athenians were concerned with the will of the gods, rather than that the gods were only considered authoritative in religious affairs.

detailed and secure description of the process of consultation of the Delphic oracle in fourth-century Greece.<sup>254</sup> It concerns the boundary designation and cultivation of land earmarked as sacred to Demeter and Persephone, on the border between Athens and Megara. The question Athens asks the oracle concerns whether this land belonging to the god should continue to be cultivated or whether it should be left untilled, therefore fitting into the category of questions regarding the organisation of sacred sites. However, the decision evidently reached further: it would affect the disputed political relationship between Athens and Megara, and possibly also the economic situation of Athens, if one takes the cultivation of this land as “one of a number of pieces of evidence for pressure on the land of Attica in the fourth century”.<sup>255</sup> Similarly, the quotation of an oracle in the *Against Meidias* shows the wider societal meaning of cultic-related oracular divination too: the oracle appears to be concerned with ritual observance, yet it is re-used and re-quoted in a new context here in a legal trial, employed as evidence to prove that Meidias is guilty of impiety.

The function of the oracle in the speech is twofold: while its quotation brings in to the speech a higher authority, Demosthenes actually uses the god’s message to make a particular point. The first of these functions is quite obvious: Martin for example sees the oracles as a call to “a higher authority (the gods themselves who have given the oracles, that is Apollo and Zeus) for these customs.”<sup>256</sup> While the oracles are certainly a reference to a religious authority, the oracles are, in fact, employed by Demosthenes for something quite different: together with the law regarding preventing choristers from performing, which follows the oracles, these divine signs are brought in to try to convince the jury that Meidias broke a particular rule through his assault on Demosthenes.<sup>257</sup> The quotation of oracles functions then as the quotation of a law concerning a religious matter. Aside from stating the oracle came from both Delphi and

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<sup>254</sup> On the inscription and the historical context see in particular Rhodes and Osborne (2003), 272–281.

<sup>255</sup> Rhodes and Osborne (2003), 279. On the history of the conflict between Athens and Megara regarding Megarian encroachment of sacred land see Thuc. 1.139.1–2, who discusses it as a potential cause of the Peloponnesian War. See Bowden (2005), 91–92 for discussion.

<sup>256</sup> Martin (2009), 22.

<sup>257</sup> Cf. MacDowell (1990), 17–18.

Dodona, there is little indication of the actual oracular consultations at which these pronouncements originated: no specific recipient, time or occasion is mentioned. It is possible these oracles came from an archive of oracular responses which the city of Athens possessed, though the evidence for such an archive is indirect, as we shall see when returning later to the question of the origin of these quoted oracles. Though rather general in nature, they are employed by Demosthenes to make a very specific point: as discussed above, he employs them to elevate the religious nature of his own position and thereby to make an allegation of impiety against Meidias. In both the lack of specificity of the oracles themselves, and their application for a very specific function, the oracular pronouncements here are similar to the ‘leaders oracle’ quoted in Demosthenes’ *On the False Embassy* and by Dinarchus – as well as, as we shall see, the only oracle quoted in a private speech in the corpus of the orators.

### ***“Saying the same thing as Solon’s law”: Demosthenes’ Against Macartatus***

The third Demosthenic speech to quote an oracle is *Against Macartatus* (Dem. 43).<sup>258</sup> The oration was written for a man, possibly called Sositheus, who took Macartatus to court over the inheritance of the estate of Hagnias, a distant relative.<sup>259</sup> The trial is not easy to date but probably occurred in the late 340s BCE.<sup>260</sup> The attribution of its authorship to Demosthenes has been questioned, on grounds of style and a lack of sophistication in its legal argumentation, though of course these elements are hard to assess objectively.<sup>261</sup> More importantly, however, it appears to be a genuine fourth-century speech.<sup>262</sup> *Against Macartatus* is a private speech, not a public one – in fact, the only private speech to quote an oracle. The oracle comes in the second half of the speech, as the speaker attempts to prove his claim to Hagnias’ estate by discussing the obligations conferred on kinsmen, alongside the right of inheritance. He argues his opponents are not closely enough related to Hagnias to perform the duties associated with

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<sup>258</sup> The attribution of this speech to Demosthenes has been widely questioned: see Scafuro (2011), 138-139.

<sup>259</sup> The speaker is not named in the speech itself, only in the testimonies inserted at Dem. 43.36, 37, 46, 70.

<sup>260</sup> Scafuro (2011), 137-138.

<sup>261</sup> See Scafuro (2011), 138-139 for discussion.

<sup>262</sup> Scafuro (2011), 139; also Humphreys (1986), 63-67, Thompson (1976), 63.



kinship and therefore should not reap the benefits of this either (Dem. 43. 53-59). Sositheus quotes a law, attributed to Solon, regarding funeral rites: the law specifies when the deceased shall be buried and which female members of the family are allowed to follow the procession and enter the burial chamber, restricting this to “those who are within the degree of children of cousins” (Dem. 43.62).<sup>263</sup> Having argued his own close relatives fit these criteria, whereas his opponent’s female relatives do not, the speaker introduces an oracle:

Read to me the extract from the oracle brought here (κομισθείσης) from Delphi from the sanctuary of the god, that you may see that it says the same things concerning relatives as do the laws of Solon.

#### ORACLE

*May good fortune be yours. The people of the Athenians ask about the sign (σημείον) that appeared in the sky: what should they do, or to what god should they sacrifice or pray, so that the sign may turn out best for them? It will be well for the Athenians with reference to the sign that appeared in the sky that they obtain favourable omens while sacrificing to Zeus most high, to Athena most high, to Heracles, to Apollo Saviour, and that they send offerings to the Amphiones; for good fortune to Apollo, guardian of the streets, to Leto and to Artemis, and that they make the streets fill with the savour of sacrifice; that they set up mixing bowls for wine and choruses and to put on crowns in the ancestral manner, and in honour of all the Olympian gods and Olympian goddesses, for all of them, to raise high the right and the left hand in the ancestral manner, offering public thanksgiving. To the founding hero after whom you are named, sacrifice and bring presents according to ancestral custom. For the dead, the relatives are to perform rites on the appointed day according to established custom. (Dem. 43.66).*

As in the other speeches discussed so far, here too the speaker asks the court clerk to read an oracle out loud. A document recording this oracle has in this case survived. Previous scholars have largely ignored the question of its authenticity. In her recent translation, for example,

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<sup>263</sup> The authenticity of this law is accepted by Scafuro (2011), 166 and Blok (2006), 200-201, 210-211 contra Canevaro (2013), 30 n.63: see below. On Solon and his role in fourth-century oratory as legislator, see Chapter Five.

Scafuro considers the oracle authentic, only noting briefly that the speaker makes very little use of it.<sup>264</sup> Martin too does not discuss the oracle in depth and takes its authenticity for granted.<sup>265</sup> An exception is Mikalson, who has recently examined its genuineness.<sup>266</sup> As with the *Against Meidias*, the authenticity of this document requires assessment before analysing the oracle and its function within the speech. None of the documents contained in *Against Macartatus* are incorporated in the stichometry of the oration, which means these were not included in the speech's *Urexemplar*.<sup>267</sup> The oracle document at paragraph 66 appears to be a full report of an oracular consultation, opening with a wish of good fortune, followed by the question asked and the response received from the Delphic oracle. The question asks for interpretation of a sign in the sky: while not a common type of oracular enquiry in our sources, there is one other such case mentioned in a speech of Aeschines, and other evidence for the Greeks' concern with portents and signs illustrates that this must have been normal practice.<sup>268</sup> The Pythia's answer is also a common one: it orders the Athenians to make specific sacrifices and honours to particular gods. However, the last line commands relatives to perform the customary rites for the dead on the appointed days. This is the only line of this oracular document which actually fits the content of its quotation in the speech. Yet it is also the most unusual sentence of the oracular response: in Fontenrose's collection of Delphic responses, no other Delphic oracle orders the consultants to generally respect funerary rites.<sup>269</sup> This makes

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<sup>264</sup> Scafuro (2011), 168-169.

<sup>265</sup> Martin (2009), 274; 297-298. So too Thompson (1976), 100; Bowden (2005), 118-119.

<sup>266</sup> Mikalson (2016), 269-273. Contra his earlier acceptance of the oracle's authenticity in Mikalson (1983), 42.

<sup>267</sup> Canevaro (2013), 30 n.63 argues that the stichometry of the *Against Macartatus* shows none of the documents in the speech were originally included. Further analysis indicates that the documents are all later forgeries and therefore unreliable sources: private correspondence with Mirko Canevaro (29/07/2015). Even if that means not only the oracle but also the law of Solon quoted at Dem. 43.62 is not authentic, the point important for this thesis – that the law deals with burial rites and the classification of female relatives – is stated clearly enough in the speaker's paraphrase of the law.

<sup>268</sup> Scafuro quotes Gernet (1957), 118 as saying this type of question conforms with common practice of the time, but no other oracle enquiries asking for clarification of a sign are recorded in Fontenrose's catalogue. The only other clear example is referenced in Aeschin. 3. 130: apparently the death of celebrants at the Mysteries (according to the scholia they were seized by sharks while bathing) was taken as a sign (σημείον) and it was consequently suggested that they go to Delphi "to inquire of the god what was to be done". Aeschines says that Demosthenes opposed this on the grounds that the Pythia was under control of Philip.

<sup>269</sup> There are many oracles which concern the dead, but these differ in that they either relate to appeasing the murdered dead (e.g. Hdt. 1.167, Q113 in Fontenrose's collection) or command the burial or establishment of cult for

the oracle rather suspicious; it is possible that the last line has been added to a regular oracle ordering sacrifice, in order to make it applicable to the context. However, the rest of the oracle looks questionable too: it repeats multiple phrases from the first oracle inserted as a document into Demosthenes' *Against Meidias* (Dem.21.52), which we have already come to consider a post-classical insertion.<sup>270</sup> Furthermore, other documents in *Against Macartatus* also include quotations from documents in *Against Meidias*.<sup>271</sup> Moreover, the clause commanding sacrifices "to the founding hero after whom you are named" would be unexpected for an Athenian to receive: although there are numerous heroes connected to the founding of the city, the name of course comes from the goddess Athena, so this clause does not fit the Athenian context very well.<sup>272</sup> Lastly, the language of the oracle is uneven: beginning in standard epigraphic Attic, the second half incorporates Doric features (largely in the passages mirroring the oracle in Dem. 21). One can conclude, therefore, that the oracle included in the speech is a later insertion, possibly Hellenistic: an editor may have had access to a copy of Demosthenes' *Against Meidias* and incorporated elements from that speech's documents into this one, or the other way around. The question of the oracle consultation was possibly based on the editor's knowledge of oracular practice, while the last line of the oracle could have then been added to make the deposition relevant to the context of Sositheus' inheritance claim.

As with *Against Meidias*, the oracle therefore must be judged on the speaker's description of it. Having introduced it as an oracle brought from Delphi that "says the same things concerning relatives as do the laws of Solon", Sositheus continues by stating:

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a specific dead person (e.g. Q167). See Iles Johnston (2005) on these types: she does not discuss the Dem. 43 oracle but does classify it, under a separate category of 'other', illustrating its atypicality.

<sup>270</sup> Compare Dem. 43.66 with the oracle itself from *Against Meidias*: "Sacrifice for health and pray to Zeus the highest, to Heracles, to Apollo the protector; for good fortune to Apollo guardian of the streets, to Leto, to Artemis; and set up mixing bowls in the avenues and choruses, and put on crowns following the ancestral rules for all the Olympian gods and goddesses, raising high their right and left hands, and show gratitude" (Dem. 21.52). The line "to establish choruses in accordance with ancestral custom, to make streets smell of sacrifice, and to wear crowns" from the description of the oracle at Dem. 21.52 is also included here in a rephrased format.

<sup>271</sup> E.g. Dem. 43.75 contains phrases similar to the document inserted at Dem. 21.47. With thanks to Mirko Canevaro for this observation.

<sup>272</sup> As Bowden (2005), 118 remarks.

You hear, men of the jury, that Solon in the laws and the god in the oracle say the same things, commanding (κελεύων) the relatives to act in the interest of the departed on the appointed days. But neither Theopompus nor Macartatus showed any concern for these things, caring only for this: to keep what does not belong to them and to complain that, having held the estate for themselves for so long, they now have to contend for it. (Dem. 43.67).

The oracle is first described as a command from the god (κελεύων), as an order to treat the dead correctly. Secondly, the speaker introduces the oracle to support a law. This is similar to the *Against Meidias* oracle, where the speaker also makes use of two types of evidence, an oracle and a law, to make a particular point (in the case of Dem.21, that Meidias' action amounts to impiety; in Dem. 43, that close relatives of the deceased have duties to fulfil). In this case, however, the speaker also explicitly compares the two sources of authority with each other, averring they say the same things (ταὐτὰ). Disregarding the transmitted document as a later insertion, it is hard to imagine what kind of oracle would have been quoted here, which could have been similar to the law quoted at paragraph 62 – particularly the part actually relevant to Sositheus' argument, namely which female relatives may execute funerary duties.<sup>273</sup> From what we know of oracular enquiries, this is not the kind of thing which the Pythia would prescribe: as mentioned above, the only oracular responses concerning burial or the treatment of the dead deal either with appeasement of those who were wrongfully killed, or the honouring of famous dead, such as heroes or legendary people.<sup>274</sup> More likely is perhaps that the oracle Sositheus chose to quote made a general statement either about the importance of funerary rites or the significance of family duties. Whoever inserted the document of the oracle, with its indirect and questionable relevance to the speaker's point, most probably had the right idea.

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<sup>273</sup> Martin (2009), 274 sees it as “surprising” that such a relevant, authoritative document as this oracle concerning funerary rites is used only once in the corpus of Attic oratory – it is less surprising if we consider that the relevance of the oracle to the actual argument is probably similar in kind to that of the oracles quoted in Demosthenes' *Against Meidias* – that is, limited.

<sup>274</sup> See the catalogue of oracles about the dead in Iles Johnston (2005), 302-305.

The quotation of this oracle is in many ways similar to the other speeches discussed so far: in the three Demosthenic ones, as in Dinarchus' *Against Demosthenes*, oracles quoted appear to be rather general, either wise sayings or demands for common sacrifices. At first sight, all these oracles differ in this regard from the majority of oracular responses evidenced in literary and epigraphic sources, which are usually more specific: the oracular response is usually not presented in isolation, but as part of a process of consultation, from making the decision to consult the god, to what the query is, who is asking it and what happened afterwards. The oracles found in oratory discussed so far appear to be very different, but it is important to notice that the oracular responses themselves are not necessarily wholly different from the ones mentioned in literary or epigraphic sources: not enough is known about the process, but possibly there were different ways the oracles could give answers, and the answers could therefore take different forms. Oracles *could* therefore be general; it is their recording which differs here in oratory: they are re-purposed and recycled. The details of the original consultations are of no importance, as the gods' pronouncements are recontextualised.

Despite the many similarities, the *Against Macartatus* differs from the other forensic speeches discussed so far in one way: it is an oration belonging to a private indictment, not a public one. That there are differences in the way speakers address their audience in the three genres of rhetorical speech in fourth-century Athens – epideictic, forensic and deliberative – was already recognized (and further formalized and fixed) at the time, for example by Aristotle (e.g. *Arist. Rhet.* 1.10). That distinctions – of style, content and presentation – are evident too within the forensic genre, between orations delivered in private indictments (*dikai*) and those pronounced in public cases (*graphai*), has also long been acknowledged: Dionysius of Halicarnassus distinguishes, for example, between Demosthenes' style in his private speeches, which he likens to Lysias', and in his public orations, which he defines as the middle style (*Dion. Hal. Dem.* 11-15).<sup>275</sup> Not only style, but content can be affected by the nature of the case too: Steven Johnstone has for instance found that prosecutors appeal more openly to pity in private cases than in

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<sup>275</sup> As Martin (2009), 293 discusses.

public ones.<sup>276</sup> Conversely, Lene Rubinstein has shown how speakers' appeals to encourage negative emotions in the judges, such as anger and hate, are much more common in public orations than in private ones.<sup>277</sup> Importantly Rubinstein observes that many private cases, concerning inheritance or dowries for example, pitted kin against kin: "a speaker who appealed too strongly and too openly to negative dicastic emotions against his relatives, (...) would very likely have met with precisely the type of resentment that he wanted to stir up against his opponent."<sup>278</sup>

In his analysis of religious argumentation in Demosthenes' speeches, Martin elucidates how this difference between public and private orations functions with regard to religion too. He shows how in the genre of public trials the character of the individual is paramount, while in private speeches the identity of the speaker appears to affect the content and style of the oration less.<sup>279</sup> It is of course also harder to study the role of identity in this latter category of speeches, as many of these are logographic, with the identity of both author and/or speaker often unknown, but in any case the constraints of genre here appear to play a more significant role.<sup>280</sup> In private speeches Martin sees fewer "religious references as a means or as result of heightened pathos", religious institutions and cults are less frequently mentioned, and accusations of impiety occur less.<sup>281</sup> Some private orations even contain no religious references of any kind at all (Isoc. 17, 21; Dem. 30).<sup>282</sup> Martin explains this reduction of religion as a "matter of appropriateness": he asserts that "the inclusion of religious points could not be done frivolously but had to match the tone and only in the comparatively few places where the tone was raised could religion itself be made an issue."<sup>283</sup> There is a correlation, then, between the

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<sup>276</sup> Johnstone (1999), 110-111 who also points out appeals for pity are for both public and private speeches much more common in defendants' speeches than in prosecutions – highlighting another factor which could influence the choice of rhetorical strategy.

<sup>277</sup> Rubinstein (2004).

<sup>278</sup> Rubinstein (2004), 194.

<sup>279</sup> Martin (2009), 290. On the role of individual style of argument, see Martin (2009), 295-297.

<sup>280</sup> Regarding religious argumentation in those public speeches which are logographic, Martin (2009), 213 has shown that "individual style" depends more on the speaker than on the author.

<sup>281</sup> Martin (2009), 293.

<sup>282</sup> Martin (2009), 293.

<sup>283</sup> Martin (2009), 294.

weightiness and public significance of the subject-matter and the frequency of religious arguments: “as with the debates in times of war, religious argumentation seems to be employed more easily if the matter can be plausibly described as particularly significant. Religious argumentation seems more appropriate if another indicator of heightened significance is combined with it; and it can, in turn, affirm the seriousness and significance of the matter that concerns the public.”<sup>284</sup> The notion of appropriateness – of what is acceptable to say – is used by others too to explain the differences between the picture of the gods of oratory and the religious discourses found in other genres of evidence for Greek religion, such as tragedy, comedy and historiography.<sup>285</sup> Appropriateness can be a useful way of explaining why we find religion more prominent in certain speeches, or why certain religious ideas are presented in a particular way in public discourse, compared to in other genres. But on its own it does not quite get to the crux of the matter: *why* religion was appropriate or inappropriate in certain settings or speeches. We will return to this important matter later.<sup>286</sup>

Nonetheless, despite this difference between public and private speeches, anomalies always exist: the oration *Against Macartatus* is exceptional not only in its discussion, let alone quotation as evidence, of an oracle, but in its employment of religious elements in general. As Martin remarks, the speech advances more religious arguments than is usual for a private oration: while slander in private speeches is usually not expressed through religious language, in this speech the speaker calls his opponent *miaros* four times.<sup>287</sup> While the discussion of burial rites is not unusual in inheritance speeches, the speaker’s claim here that it is not *hosios* if one person performs these rites and does not also inherit the deceased’s estate is unusual (Dem. 43.65).<sup>288</sup> Similarly, it is in this speech that we find the only discussion of the adoption into the *phratry* of the adopting father “the most frequently mentioned indication of legitimacy”, as an event

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<sup>284</sup> Martin (2009), 295.

<sup>285</sup> Carey (1999); Parker (1997).

<sup>286</sup> See especially Chapter Four and Conclusion.

<sup>287</sup> Martin (2009), 284; see Dem. 43. 6, 56, 68, 83.

<sup>288</sup> Martin (2009), 274.

described in ritual terms: a sacrifice, altar and sharing of meat are all mentioned (Dem. 43.14).<sup>289</sup> Why this speech appears to be more religious in tone and content than others similar to it in type of charge, occasion and context, can only be conjectured. Martin suggests as a potential reason the character of the speaker: we do not know much about Sositheus, and his public standing within the city, his background or his character may have allowed him to deviate from the norm.<sup>290</sup> However, it is of course difficult to judge based on the rarity of elements, considering the limits of the assortment of speeches which make up our corpus of Attic oratory. They represent only a small number, from a narrow selection of authors, of the actual trials which must have taken place in Athens throughout the fourth century. While evidently it is necessary to focus analysis on the speeches and evidence which has survived, it is worth remembering that deviation from the norm can be seen from both sides: not only as exceptional, but also as proof of existence. The religiously charged nature of the *Against Macartatus* may be unusual, but it illustrates the possibility of quoting an oracle in a private oration.

### ***Oracles and the Sacred Wars: Aeschines' Against Ktesiphon***

The final oracle deployed as a deposition of evidence in a law court trial forms part of Aeschines' speech *Against Ktesiphon*. In 336 BCE Athens had begun the process of restoring its walls and returning some sense of normality to its city landscape, after its defeat by Macedon at Chaeronea two years earlier had changed its political landscape irrevocably. A man named Ktesiphon submitted at this time a decree proposal suggesting the city should award a crown to Demosthenes, for his supervisory and financial contributions to the restoration of the walls and for his services to Athens generally. Aeschines took this as an opportunity to resume his long-time quarrel with Demosthenes and accused Ktesiphon of bringing an illegal proposal through a γράφη παρανόμων. Aeschines' charges were threefold: that he proposed a decree

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<sup>289</sup> Martin (2009), 275.

<sup>290</sup> Martin (2009), 296.



with false statement by claiming that Demosthenes had brought benefits to the city; that his decree proposal violated the law prohibiting the award of a crown to an office holder before he completed his *euthynai* (Aeschin. 3.9-31); and that he proposed that such a crowning should take place in the Assembly rather than the theatre, despite a law forbidding this (32-48). While these last two charges deal with very specific violations and interpretations of the law, the case itself was evidently an immensely political and even personal one, a culmination of years of hostility between two of Athens' most prominent politicians. The trial was delayed for unknown reasons: it was only in 330 BCE that Aeschines faced off – and eventually lost – against Demosthenes, whose defence speech *On the Crown* (Dem. 18) has become the most famous and celebrated example of classical Athenian rhetoric to this day.<sup>291</sup>

To refute Ktesiphon's praise of Demosthenes, Aeschines presents the judges with a detailed overview and damning judgement of Demosthenes' career (Aeschin. 3.49-167). One of the episodes he discusses is the lead-up to the Fourth Sacred War, which broke out in 339 BCE.<sup>292</sup> As we shall see, Aeschines quotes an oracle supposedly delivered in the early sixth century to the Amphictyonic Council: though his presentation of the oracle as a written deposition of evidence is no different, the inclusion of a specific moment of consultation distinguishes it from the oracles discussed so far. After a short presentation of the oracle and its place in Aeschines' narrative, this section will discuss the historicity of the events Aeschines described, before moving on to the function of the oracle within his broader argumentation.

Aeschines asserts Demosthenes had acted against Athenian interests in 339 BCE and, furthermore, “brought ruin upon our city and all of Greece by committing impiety (ἀσεβήσας) against the temple at Delphi” (Aeschin. 3.106). The orator starts off by narrating the events of the First Sacred War, which putatively took place ca. 590 BCE: the Cirrhaeans and the

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<sup>291</sup> See the introduction in Carey (2000) and Harris (1995), 138-148 on the historical context of the trial; Harris (2013a), 225-233 and Harris (2017) on Aeschines' argument against the validity of Ktesiphon's decree; Hobden (2007) discusses Aeschines' use of the past but does not cover his account of the First Sacred War.

<sup>292</sup> On the war see Harris (1995), 126-130.

Cragalidae, according to Aeschines, were accused of committing sacrilege against Delphi. The Amphictyons then consulted the oracle to ask what should be done, and “the Pythia replied (ἄναιρεῖ ἡ Πυθία) that they must fight against the Cirrhaeans and the Cragalidae day and night, bitterly ravage their country, enslave the inhabitants, and dedicate the land to the Pythian Apollo and Artemis and Leto and Athena Pronaea, that for the future it lie entirely uncultivated; that they must not till this land themselves nor permit another” (Aeschin. 3.108). Despite the seeming clarity of the god’s answer, Aeschines adds that the Amphictyons subsequently voted on the matter and that Solon of Athens moved that they should march against the offenders as the oracle had ordered (108). Having done so, the Amphictyons swore an oath and curse, vowing to aid the god to ensure no one tills the territory of Cirrha now earmarked as sacred: Aeschines quotes parts of this curse in his speech (110-111), before he has the oracle, as well as the oaths and the curse, read out as depositions of evidence:

To prove that I am speaking the truth, read the oracle of the god; listen to the curse; remember the oaths that your ancestors swore together with the Amphictyons.

ORACLE

*You will never seize and bring down this city’s tower,  
until at the god’s precinct dark-eyed Amphitryte’s wave dashes  
with a roar against sacred shores*

OATHS, CURSE (Aeschin. 3.112).

Of all the questionable oracles included in manuscripts of Attic orations, this one has been most easily accepted as a later insertion.<sup>293</sup> The oracular message does not match the speech very well, and it appears lifted from Pausanias’ retelling of the episode (Paus. 10.37.6).<sup>294</sup> Aeschines claims that over a hundred years later, the Locrians of Amphissa, the Amphissians, had come to occupy the sacred land in the Cirrhan territory and had bribed Demosthenes (113-114).<sup>295</sup>

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<sup>293</sup> Adams (1919), 395; Carey (2000), 202.

<sup>294</sup> In Pausanias’ version this oracle’s ambiguity explains the role of Solon in the story, as he is the one who interprets the words as ordering the consecration of the territory of Cirrha.

<sup>295</sup> Whether the Amphissians were guilty of any sacrilege is uncertain: Demosthenes claims that they were cultivating their own land next to the sacred territory: Dem. 18.150. See Bowden (2003b), 80-81 for a reading of the Fourth Sacred

Aeschines' account of this 'First Sacred War' is a prelude to his description of the events of 339 BCE, when he had travelled to Delphi as one of the three Pylagorai who, together with the *hieromemon*, served as official representatives of Athens to the Amphictyonic Council (Aeschin. 3.115). Just as an Amphissian launched an attack on Athens at the Council meeting, proposing the city be fined for a dedication which apparently contravened the sanctuary's rules, Aeschines jumped to the rescue of his city by calling attention to the Amphissians' occupation of sacred land and accusing them of impiety, thereby pulling the Amphictyons' attention away from any questions about Athens' conduct. Aeschines recounted the story of the First Sacred War to them and "ordered that the god's oracle, the ancestors' oath and the curse that had been uttered be read out to them" (Aeschin. 3.119). He himself also made a declaration, an oath of sorts, "to come to the help of the god and the sacred land according to the oath, with hand and foot and voice, and all my powers: and I purify our city of this impiety" (Aeschin. 3.120). Aeschines' actions led to the Fourth Sacred War, though the Athenians ended up not joining the rest of the Amphictyons in their campaign against the Amphissians through Demosthenes' intervention (125-128): most probably he thought it unwise to create a rift with Thebes, Amphissa's ally, while Athens was already at war with Macedon – though Aeschines of course in his speech portrays Demosthenes' actions in a very different light, as those of a man bribed by the impious Amphissians.<sup>296</sup>

Aeschines' oracle is thus presented in the same format as those quoted by Demosthenes and Dinarchus – as deposition of evidence to be read out by the clerk. However, it differs slightly from those others in type: it was the result of a consultation which allegedly took place at a particular time, at a specific moment of crisis. It also had a specific recipient, namely the members of the Amphictyonic Council. Thus it appears to show similarities to the 'literary' or 'mythical' oracles discussed by Lykourgos, which will be discussed later. The oracle has two functions in the speech: it is firstly part of Aeschines' narrative of the First Sacred War. The

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War in terms of the growing cultivation of marginal land and the conflicts which arose from this in this period, linking it to the Sacred Orgas oracle (IG II<sup>3</sup> 1 292): on which, see below.

<sup>296</sup> Carey (2000), 206.

Amphictyons turn to the god for advice on how to deal with the situation of the Cirrhaeans. As the issue at hand deals directly with Delphi's own territory, this consultation of the god whose sanctuary stands to be affected is unsurprising. The need for a further vote on the matter, led by Solon, is more surprising, especially if the oracle was as unambiguous in its response as Aeschines' narrative suggests. The oracular element allows Aeschines to present the Amphictyons as pious and justifies the portrayal of the subsequent military action on the Cirrhaeans as legitimate. The First Sacred War story serves to explain how the Fourth Sacred War started, which Aeschines uses to prove Demosthenes had failed Athens and committed "offences against the gods" (τῶν εἰς τοὺς θεοὺς πλημμελημάτων: Aeschin. 3.106); that he was being bribed by the Amphissians who were impious; and that it was Aeschines who acted as benefactor to Athens, helping the city by his speedy intervention in 339. The oracle as narrative element thus adds a religious component to the justification of the Fourth Sacred War. However, divine involvement is not only confined to the point when the god is expressly asked for advice, through the oracular consultation, but is alluded to throughout, as Aeschines frequently mentions the gods: he describes the events of 339 as demonstrating "how divine power and fortune (τὸν δαίμονα καὶ τὴν τύχην) are completely superior over the impiety of Amphissa (τῆς τῶν Ἀμφισσέων ἀσεβείας)" (115); he suggests the Amphissian who accused Athens at the meeting was influenced (προαγομένου) by a divine power (δαίμονιός τινος) (117); and he concludes the tale by summing up that "the gods (τῶν μὲν θεῶν) had handed the leadership in the deed of piety to us, but Demosthenes' taking of bribes had prevented it" (129). However, besides the role of the oracle in emphasizing the piety of the war and Demosthenes' subsequent impiety, the quotation of the oracle itself, as deposition of evidence, carries a narrower function. It serves as proof of the veracity of Aeschines' story: he says "to prove that I am speaking the truth (ὅτι δ' ἀληθῆ λέγω), read the oracle of the god" (Aeschin. 3.112).

Scholars have questioned the historicity of the 'First Sacred War': as the only certain accounts of these events all date from the 340s BCE or later, it has been suggested that this first war related to Delphi was invented, either as an aetiological origin story for the existence of the plot of sacred, uncultivated land near Delphi, or either by Philip or his supporters as a

justification for later actions in the Third or Fourth Sacred Wars.<sup>297</sup> Demosthenes' account of these events seem to justify doubts: in his defence speech for Ktesiphon, he calls Aeschines' appeal to the First Sacred War at the Amphictyonic Council meeting in 339 "fine-sounding tales and legends (λόγους εὐπροσώπους καὶ μύθους) concerning the consecration of the Cirrhaean territory" (Dem. 18.149). The uncertainty about the historical truth of the fifth-century war affects the oracle story too. According to his version of events, Aeschines presents the oracle as evidence on two occasions: first at the Amphictyonic Council meeting in Delphi in 339, where he apparently "ordered the god's oracle, the ancestor's oath and the curse uttered to be read to them" (119), thereby suggesting he presented some kind of written text. His report of the exact proceedings of the meeting are however not necessarily trustworthy: his narrative would not be easily verifiable to an audience in Athens nine years later.<sup>298</sup> Second, however, he also presents the oracle at the trial of Ktesiphon itself in 330. Here he definitely does have written evidence of the oracle, as well as the oath and the curse: as we have seen, he presents them as depositions of evidence (112). Furthermore, he states they "stand inscribed to this day" (ἀναγεγραμμένων ἔτι καὶ νῦν) (113). Despite the possibly fictitious nature of the First Sacred War and the original oracular consultation, Aeschines presents a physical record of the oracle as a written text in 330. The next section, which analyses the origin of oracles and how these might have been recorded and stored, will examine further how we may understand this seeming impossibility.

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<sup>297</sup> See Bowden (2003b), 73-75 for the war as an explanation for the existence of sacred land; see Robertson (1978) on the story as an elaboration invented by Philip or his supporters.

<sup>298</sup> While Demosthenes' speech (Dem. 18.149-151) at least verifies Aeschines' account of the Amphictyons' meeting, in so far that he brought up the 'first sacred war' and thereby started what would become the Fourth Sacred War, Demosthenes disputes other elements of the story, for example that Aeschines brought up this topic as distraction from an Amphissian's attack on Athens (Dem. 18. 150). Of course, Demosthenes' version of events equally is not free from suspicion: see Harris (1995), 128-130.

## 2.2 The authority of oracles as depositions of evidence

### *Normative oracles, law-like parallels*

Divination, it has been argued, provided the ancient Greeks with a way of answering questions which humans themselves could not.<sup>299</sup> These questions focused often on areas in which people had to deal with uncertainty and risk.<sup>300</sup> Less directly predictive than informative and revealing, divinatory techniques helped Greeks reveal and explore future possibilities.<sup>301</sup> The disparate nature of the evidence for divination in general, even oracular divination in particular, complicates this picture, however: evidence for oracular questions and answers themselves comes from a wide range of literary sources, as well as epigraphical ones, over a broad chronological span and concerning a handful of different oracles: each type of source displays a wealth of variety in nearly every aspect of oracular consultation, from its functioning, the form of its questions and answers, the mechanism of divinatory techniques and the characters involved, to its function – both on individual and societal levels. The oracles discussed above quoted by litigants in law court speeches in fourth-century Athens add to this complex picture. What do they tell us both about the role of oracular consultation in this society, and about the role of the divine in rhetorical public discourse?

In Demosthenes', Dinarchus' and Aeschines' speeches, oracles are presented in a manner similar to laws: not only by their presentation as depositions of evidence, but also through the *type* of authority they carry. These oracles, as we have seen, are all rather general. A warning to "beware of your leaders", a command to organise dances and perform sacrifices to the gods, and an order regarding funeral rites (if that is what the *Against Macartatus* oracle is): these divine messages do not address specific recipients, nor do they discuss, warn of or foretell any particular event. Even if they may have originally resulted from a specific oracular enquiry,

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<sup>299</sup> Bowden (2005), 5.

<sup>300</sup> Eidinow (2007), 233.

<sup>301</sup> Cf. Beerden (2013), 226-227.

they are now decontextualized and have become general and generic advice, adopting a normative character. This is illustrated best by the ‘leaders’ oracle. In *On the False Embassy*, Demosthenes calls the oracle “a warning of the gods” (τῶν θεῶν οἱ ὑμῖν προλέγουσιν), as well as an order: “it says in the oracle to preserve the city’s unity” (Dem. 19.298) and “the oracles tells us to do (φησὶ δέ γ’ ἡ μαντεία δεῖν) whatever does not please the enemy” (299). The oracle is a sort of general maxim providing generic advice. The oracle quoted by Aeschines can be considered normative too: this one does have a specific (and supposedly historical) application – awarded as it was to a designated recipient (the Amphictyons) at a particular point in time – yet the command of the god to leave the land untilled is an order for all eternity. As we shall see later in this chapter, this contrasts to the oracles Lykourgos quotes. These all have a known recipient, a specific context of consultation and are less normative. They are not simple commands but rather predictions: they contain a conditional element, which is missing from (what we know of) the oracles quoted by the other orators.

Importantly, despite their general and normative nature, the oracles of Demosthenes, Aeschines and Dinarchus are *used* as sources of evidence for very specific points. The oracle quoted by Aeschines advises the Amphictyons on a course of action, in response to the sacrilegious actions of the Cirrhaeans, but its function in Aeschines’ speech is to highlight Demosthenes’ role and actions in the events of the Fourth Sacred War: Aeschines does not comment on the gods’ will or reasoning in proclaiming the oracle. Demosthenes’ oracles are similarly used as evidence to persuade the audience of a particular point concerning the litigant’s opponent. In *Against Meidias*, Demosthenes presents the oracles as evidence that “your choruses and hymns to the god are sanctioned, not only by the laws concerning the Dionysia (κατὰ τοὺς νόμους τοὺς περὶ τῶν Διονυσίων), but also by the oracles (κατὰ τὰς μαντείας) (...)” (Dem. 21.51). The quoted oracles demand the regular performance of honours to the gods, but they are *used* by Demosthenes to accentuate specifically the sacred character of the Dionysia. This sacredness of the city’s choruses and hymns, which the oracle confirms, is then in turn taken to prove Meidias’ assault against Demosthenes was not only an act of ὕβρις but also impiety (Demosthenes says “under the circumstances, I think you would be justified in

condemning also the impiety (ἀσέβεια) of the act”: 51). Demosthenes explicitly pairs the oracles with ‘the laws about the Dionysia’ (Dem. 21.51): the language he uses in discussing this, saying it is κατὰ τὰς μαντείας that choruses and chorus-masters wear crowns, frames the oracles in the same way as the frequent references Demosthenes makes in the speech to obeying the laws: the phrase κατὰ τοὺς νόμους, “according to the laws”, is ubiquitous (e.g. Dem. 21. 51, 67, 82, 189, 207). Demosthenes so urges the jury to give the oracles a position parallel to laws. In *Against Macartatus*, the comparison of oracles with law – here specifically Solon’s law – is made even more explicit. The speaker says: “please read the words of the oracle brought from Delphi, that you may see it speaks in the same terms concerning relatives as do the laws of Solon” (Dem. 43.66). How similar this oracle may have been to a law that prescribes which female members of the family are allowed to enter the chamber where a deceased lies is unclear; however, it is evident nonetheless that the speaker introduces the oracle to support a law: “you hear, men of the jury, that Solon in the laws and the god in the oracle say the same things” (67). The ‘leader oracle’ quoted in *On the False Embassy* and by Dinarchus is slightly different perhaps in that it is only used to incite the suspicion of the jury for the politician under discussion. It too, however, is a general maxim applied to a specific context by the litigant. Oracles here are therefore general pieces of advice or information, presented as sources of authority, analogous to the laws of the city.<sup>302</sup>

In his list of proofs available to rhetorical speakers, Aristotle calls witnesses (μάρτυρες), laws, (νόμοι), contracts (συνθήκαι), oaths (ὄρκοι) and the testimony of slaves acquired through torture (βάσανοι) all ἄτεχνοι πίστεις, “non-technical proofs”, (*Rhet.* 1.15). These πίστεις are “those which have not been provided by ourselves but were already in existence” (Aristot. *Rhet.* 1.2). Under the category of μάρτυρες, Aristotle recognises recent witnesses alongside ancient ones: “the poets and men of repute whose judgements are known to all” serve as witness to the past, while

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<sup>302</sup> Cf. Bowden (2005), 57.



one should appeal (...) for the future to chresmologues (περὶ δὲ τῶν ἐσομένων καὶ οἱ χρησμολόγοι); thus, for instance, Themistocles interpreted the wooden wall to mean that they must fight at sea. Further, proverbs, as stated, are evidence; (...) (Arist. *Rhet.* 1.15.14).

Aristotle's statement on the use of divine signs as proof is curious. Contrary to how it is often understood, Aristotle does not actually refer to oracles themselves as witnesses, but only to chresmologues, the interpreters of oracles.<sup>303</sup> It is they who can serve as reference to explain events in the future. Yet as example Aristotle then brings up Themistocles and the 'wooden wall' oracle – as we have already seen, in Herodotus' narrative this was an oracle which came from Delphi, not a chresmologic one. In any case, the oracles discussed so far are presented in a way which makes them fit in with other ἄτεχνοί πίστεις – their divine origin and nature is not particularly emphasised, as their authority appears to come more from their role in corroborating laws, than their role as source of divine authority. These oracles seem to say something about human behaviour, thought or will, specifically of one's opponent, and thus they are not really used as a source for what traditionally we have come to understand divination to be: as a means of eliciting knowledge from the gods, particularly concerning divine will.

### ***The question of origin: archives and collections***

Composed in writing yet orally delivered, revised for publication, then textually transmitted: the relationship between the oral and the literary in Athenian oratory is a complex one. What complicates this further are the quotations encased within these speeches: of laws, poetry and oracles – different types of evidence made up of re-quoted and re-contextualized texts. Having examined the oracles quotes as depositions of evidence in oratory, it is evident, first, that they deserve and demand re-examination: too often the oracular documents included in the

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<sup>303</sup> Walsh (2003), 63-64, for example, does not recognise the role of chresmologues in Aristotle's statement, simply equating chresmologue with oracle itself.

manuscripts are taken at face value, while the recent movement offering a more critical examination of oratory's documents and their transmission has so far not included oracles in their scrutiny of laws, decrees and witness statements. Yet as argued above, the oracular documents included in Demosthenes' *Against Meidias*, *Against Macartatus* and in Aeschines' *Against Ktesiphon* should be disregarded, their analysis based rather on what the speeches themselves tell us. Nonetheless, these empty spaces for missing quotations should not be wholly overlooked: as traces of the ceremonial retrieving and reading of written records by a clerk, they remind us of the physicality of the oracles read aloud. They also raise the question of where these oracles discussed by litigants in law courts come from – a question to which scholarship dealing with the complex issues of literacy, orality, writing and record-keeping in ancient Greece has given comparatively little consideration.<sup>304</sup>

The origin of oracles discussed by litigants matters, because it helps clarify the process by which orators come to make the decision to quote these specific oracles in their orations: it elucidates the nature of these pronouncements further, as well as the authority which they carry. Furthermore, juxtaposing the oracles discussed above, quoted as written texts, with the ones which Lykourgos reads out himself, in verbal format, which will be discussed in the next section of this chapter, allows us to examine the use of and relation between the oral and the written in fourth-century Athens. We will see that the format in which oracles are presented, as deposition of evidence, as well as the non-specificity and re-quotation of some of these, both impact how we might answer the question of origin.

First, the fact that oracles can be quoted as depositions of evidence means litigants would have presented them at the *anakrasis*, the pre-trial hearing, as written texts, to be sealed and held in the *ekhinos* until the trial.<sup>305</sup> While speakers may have written down for this purpose oracles

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<sup>304</sup> Thomas (1989) and Faraguna (2015) do not discuss oracles at all; Sickinger (1999) and Pébarthe (2006) only in passing; see below.

<sup>305</sup> Written documents were used at all the different stages of a legal trial: on the plaint which begins the indictment process, also written down, see Harris (2013b); on the preservation of records of trials after they took place, see Faraguna (2015), 11-12.

familiar from memory, more likely they copied the oracle from a written source. Oracle stories, particularly those of successful consultations, would be collected, remembered and retold by different agents: the oracular shrines themselves, of course, as well as the consulters, both individuals and cities.<sup>306</sup> Since basic aspects of the practical workings of oracular consultations remain uncertain, it is unclear whether oracular pronouncements would be written down as part of the process of consultation itself at Delphi: the lead tablets containing questions (and sometimes responses) indicate this was the case at Dodona.<sup>307</sup> If we assume a speaker in a law court obtained an oracle from a written source, what kind of record could this have been?

Different suggestions have been made, though all are – to varying degrees – speculative. Richard Stoneman declares it was the oracular temples who kept records of the oracles they awarded: he says they were used by antiquarians and suggests too that poets hung around the Delphic oracle, transcribing and collecting oracles.<sup>308</sup> However, the only evidence for these statements comes from the Roman period, from Plutarch especially, and his reliability as a source for the precise working of the Delphic oracle in the classical period is questionable.<sup>309</sup> Other scholars envision instead an oracular record compiled by the consulters themselves. It seems after all very plausible that those sent on behalf of the city to consult at Delphi or elsewhere would bring back written evidence of the oracle to present to the Assembly or Council, as embassies do too upon return from their missions.<sup>310</sup> This suggestion is corroborated by the famous inscription regarding the Sacred Orgas, mentioned above. It describes how the Athenians prepared two pieces of tin with two possible answers to their question regarding whether land should be cultivated or left untilled (IG II<sup>3</sup> 1 292.23-41). These were each deposited in a sealed jar and the Pythia at Delphi was asked to choose between them, before the consulters

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<sup>306</sup> Cf. Thomas (1989), 275.

<sup>307</sup> Cf. Dillery (2005), 225-226. On Dodona's lead tablets, see Eidinow (2007).

<sup>308</sup> Stoneman (2011), 171-172.

<sup>309</sup> For example, in his discussion of verse v. prose pronouncements Plutarch mentions Herodotus, Philochorus and Ister as collecting oracles (Plut. *De Pyth.* 19): the mention of the first of these cautions us already against assuming these are references to purposeful collections of oracles, rather than simply citations of oracles in more general works, contra Stoneman (2011), 172. See also Bowden (2013), esp. 51-58, on the differences between the oracle in the classical period and in Plutarch's time.

<sup>310</sup> Sickinger (1999), 136.

returned to Athens so that “the oracle (μαντεία) and the writings on the pieces of tin shall be read to the People” (ἀνα[γ]νῶσθ[ήτ]ω τῶι δήμῳ ἢ τε μαντεία καὶ τὰ / [ἐ]κ τῶ[ν κα]τ[ι]τέρω[ν] γρ[ά]μματα) (IG II<sup>3</sup> 1 292.49-50). Oracles were therefore likely brought back from shrines as written documents, but whether this also meant that these documents were preserved is not a foregone conclusion. Thomas has shown how the analysis of archives in classical Athens illustrates the concept of record-keeping then differed to the one of archives now: some documents were only meant to be preserved as long as the specific need for them existed.<sup>311</sup> However, as we shall see, scholars regularly claim that there was a collection or archive of oracles in Athens. They infer this indirectly from the evidence for the existence of two other types of records: the archive of laws and decrees stored at the Metroon, and the collections of oracles connected to chresmologues known from literary sources.

First, we know the Metroon housed an archive of the records of the Assembly and the Council, which included the laws and decrees of the city.<sup>312</sup> These were recorded on a variety of materials: while the archive probably included stone inscriptions too, most documents were on perishable media such as papyrus and wooden and wax tablets.<sup>313</sup> Legislative documents quoted in the law courts could therefore have been retrieved from this archive. James Sickinger and Christophe Pébarthe suggest the Metroon was likely the place where texts of oracles were stored too, though we have no direct evidence for this.<sup>314</sup> A second type of record scholars have taken as a parallel for the concept of an archive of oracles, are the oracle collections of

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<sup>311</sup> Important to remember too is that other types of record we might expect to see were never made in the first place. For example, Athens had no land register or list of those eligible for liturgies: Thomas (1989), 69, 82.

<sup>312</sup> Orators make reference to the record-keeping of laws and decrees, see for example Aeschin. 2.89. On the archive of the Metroon, which is thought to have been instigated at the end of the fifth century, see Sickinger (1999); Pébarthe (2006), 147-172. For its wider context within the rise of literate culture in Greece, see also Thomas (1989), esp. 34-38. The Metroon should not be seen as a centralised archive for the city: it housed only the documents of the Assembly and the Council, while every public official would separately store the records relevant to their own office, and many records were kept at the deme level: see Faraguna (2013), 164-165; Pébarthe (2013), 115-123. As such, oracles might also have been stored elsewhere where laws and decrees were kept: see Faraguna (2015), 2. Trampedach (2015), 234 suggests the *exegetai* might have kept records of oracles, in a similar vein to the collections of records of other magistrates.

<sup>313</sup> Thomas (1989), 37, 72.

<sup>314</sup> Sickinger (1999), 136; Pébarthe (2006), 157; MacDowell (2000), 335 imagines an archive too but does not specify further.

(semi-)mythical prophets and poets found in literary sources. Herodotus and Aristophanes discuss oracles pronounced by famous poets of varying mythical character, such as Bacis (Hdt. 8.77, 9.43), Musaeus (Aristoph. *Frogs* 1031-5), Orpheus (Aristoph. *Frogs* 1031-5), Laius (Hdt. 5.43.1) and the Sibyl (Aristoph. *Knights* 61, *Peace* 1095). They usually connect these collections to χρησμολόγοι, a term difficult to interpret but used for individuals who collected or purveyed oracles, interpreted them, possibly sold them, maybe also spoke them themselves.<sup>315</sup> Herodotus, for example, talks of an Onomakritus, a “chresmologue who had set in order the oracles of Musaeus (διαθέτην χρησμῶν τῶν Μουσαίου)” (Hdt. 7.6.3). In Aristophanes’ *Peace*, a chresmologue called Hierocles recites oracles of Bacis (*Peace*, 1046-7, 1070-1, 1119). In *Birds*, another chresmologue interrupts Pisthetaerus’ sacrifice by quoting oracles from Bacis out of a book (Aristoph. *Birds* 962-988). And in the *Knights*, oracles of Bacis are also presented as written down texts (*Knights* 119, 1003-1010) which can be quoted and applied to a particular context (see also Hdt. 9.43).<sup>316</sup> In these sources chresmologues, and thereby also the collections of oracles which they work with, are often depicted negatively, as liable to forgery and full of nonsense. However, Bowden has argued convincingly these portrayals should not be taken too literally and that instead these collections were taken seriously as religiously significant and authentically divine.<sup>317</sup> Bowden suggests too that such collections of oracles would have been consulted by *chresmologues* for state sacrifices, that these oracles were brought up for discussion

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<sup>315</sup> The exact meaning of the term χρησμολόγος and its relationship to other religious experts, such as seers or *manteis*, is unclear: see most recently Bowden (2003a), 256-264; Dillery (2005); Flower (2008), 60. Whether these were the same people who would be called on by the *demos* as expert to interpret oracles freshly delivered from oracular sanctuaries, as mentioned in the famous case of the wooden wall episode, is beside the point here. See Dillery (2005), 213-214 for other occasions when religious experts, whether called seers or chresmologues or other, offered divine interpretation to the city, particularly in times of crisis such as war or disease.

<sup>316</sup> Johnston (2008), 138 states it is unclear whether Bacis left a written or an oral record, but the *Knights* makes clear that Bacis’ oracles are imagined to be written down: they can be stored in a house (1000-3) and are read out (119).

<sup>317</sup> Bowden (2013), esp. 264-270. Besides Aristophanes’ ridicule of *chresmologues* and their oracles, Herodotus also paints them in a negative light, by portraying Onomacritus as caught interpolating into the oracles of Musaeus and consequently exiled from the city (Hdt. 7.6.3). Despite the allegation of fraud it contains, the story and Onomacritus’ banishment clearly show people believed in the oracles’ authenticity: see Bowden (2003a), 264-265 on this episode. See also Parker’s (2000), 80-81 argument that skepticism of individual diviners “supports rather than subverts belief in the possibility of divination, since failures can be explained through the incompetence or fraud of particular diviners”. Contra Dillery (2005), 224.

in the Assembly, and that we should envision the oracles quoted in law-court speeches as comparable.<sup>318</sup>

Does the aforementioned evidence indicate archives of oracles existed; a collection similar either, firstly, to the prophetic texts of other seers or, secondly, to the laws and decrees collected in the Metroon, from which litigants could pull relevant oracles for their court speeches, as Demosthenes, Dinarchus and Aeschines appear to have done? This may well be the case: not enough evidence has survived to provide a conclusive answer but the parallels seem plausible. However, there are two further points to consider: the first concerns a third possible source of origin, one not examined in connection to this debate. The second deals with the significance of the origin of oracles, a point often overlooked. The type of record collection we envisage as model for a collection of oracles is significant, as it affects the function and authority of the quoted oracle, and helps explain why orators in the speeches discussed above choose to quote oracles.

First, another format of written records existed in classical Athens: arguably the most important one, at least the most visible, namely stone inscriptions. All kinds of noteworthy information was regularly inscribed on stone stelae and erected in public places, from laws and decrees to treaties, from lists of traitors to lists of benefactors, from divine dedications to boundary markers. That the significance of these inscriptions goes beyond the words written on them has long been recognised: they are visual, performative objects as much as records of writing, and have a monumental function.<sup>319</sup> Yet they also operate as record-keeping sources: Thomas has cogently argued how inscriptions could be just as authoritative as archives such as the Metroon: “We must rid ourselves of the idea that ‘proper’ documents could only be on paper or papyrus. The stone inscriptions were in any case the most certain means of preservation. We

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<sup>318</sup> Bowden (2003a), 266-271, based on a reading of the Chalcis decree (IG I<sup>3</sup> 40.64-67) together with the regulations for *hieropoioi* ([*Ath. Pol.*] 54.6). See also Bowden (2013), 51, which talks more generally of the Demosthenic oracles as originating in “some kind of archive” which recorded oracles from state consultations. Cf. also Bowden (2005), 118.

<sup>319</sup> For further discussion of and bibliography on the monumentality of records see Shear (2007) and Lambert (2011).

must also recognize that, at least in the classical period, archive originals were not felt to be more authoritative than the public stele.”<sup>320</sup> A minority of documents, such as laws, decrees, treaties and lists for example, were ‘published’, i.e. “inscribed for public view”, often in abbreviated form compared to what would have been archived.<sup>321</sup> Speakers in the Assembly and the law-courts could consequently quote documents from stelae too, and they at times do so explicitly. In Lysias’ speech *On the Murder of Eratosthenes*, for example, the speaker presents as deposition “a law from the pillar in the Areopagus” (Lys. 1.30: τοῦτον τὸν νόμον τὸν ἐκ τῆς στήλης τῆς ἐξ Ἀρείου πάγου; cf. also Dem.57.56).<sup>322</sup> Stelae recording public records were most often set up on the Acropolis, on the Agora in front of the Bouleuterion or the Metroon, or at sanctuaries.<sup>323</sup> Furthermore, inscriptions could contain records of oracular consultations. This is shown by the epigraphic evidence: a stele set up on the Acropolis in the middle of the fifth century records that the Praxiergidai, an Athenian *genos*, received an oracle from Apollo at Delphi regarding the *peplos* of Athena (IG I<sup>3</sup> 7). The inscription details not only the decree passed by the *boule* and *demos* regarding this matter, but also the oracular message itself:

Apollo issued the following oracle: it is better [for the Praxiergidai]  
to put the peplos on [the goddess and make preliminary sacrifice]  
to the Fates, to Zeus Leader of the Fates, to Earth ... (IG I<sup>3</sup> 7.10-13).<sup>324</sup>

The purpose of inscription is not the documentation of the oracle in and of itself; this is rather a byproduct of publishing the decree.<sup>325</sup> It is admittedly rare for an Athenian inscription of the classical period to include the text of an oracle itself, as is the case here, yet other examples

<sup>320</sup> Thomas (1989), 46. Cf. also Davies (2003), 328 who illustrates that for certain types of document (e.g. dedications) it is clear that what was being displayed in public was the primary document; any copy in any archive was secondary. On the different attitude in the ancient world to word-for-word accuracy in copying, see Thomas (1989), 47-48.

<sup>321</sup> Davies (2003), 328. It is possible that the archive at the Metroon contained stone inscriptions too, but the difference with the public stelae lies in the visibility.

<sup>322</sup> Pébarthe (2006), 323 discusses stelae as one type of document cited in Attic oratory.

<sup>323</sup> Liddel (2003) examines the location of Athenian state decrees, the majority of which are placed on the Acropolis. See Shear (2007) on the significance of the Agora as a place of publication for public records.

<sup>324</sup> [τά]δε ἡ οὐ Ἀπόλλων ἔχρεσεν γ[όμιμα Πραχσιεργίδαις]  
[ἀμ]φιεννύουσιν τὸν πέπλον τ[ὸν] ἐν θεὸν καὶ προθύουσιν  
[Μοί]ραις, διὰ Μοιρ<α>γέτει, Γ[ῆ]ι — — — — —

<sup>325</sup> However, if the restored reading of the first section of the inscription is correct, part of the impetus for the decree itself was exactly a request by the Praxiergidae to publicise the oracle: “concerning the request [of the Praxiergidai to write up the oracle] of the god and the [decrees] formerly [made about them]” (IG I<sup>3</sup> 7.3-4).

show it was at least common enough to record that an oracular consultation had taken place and to document its result: an inscription from the mid-fourth century details an oracle made by Apollo “instructing the Athenian demos” to dedicate a house and garden to Asklepios (IG II<sup>2</sup> 4969.1), while another from the same time period, mentioned already, records an oracle ordering altars to be built to Ares and Athena Areia (SEG 21 519). Inscriptions could also note the intention to consult the oracle: a law found inscribed on the Acropolis, which can be dated to 335/4 BCE, instructs the Athenians to “enquire of the god, if it is better and preferable for the Athenian People to make the [cult equipment] sacred to Artemis larger and more beautiful or to leave them as they are now; and to enquire also ...” (IG II<sup>2</sup> 333.24-26).<sup>326</sup> Is it possible, then, that the oracles quoted in oratory were collected from epigraphic records? While it might be difficult to imagine an oracle like the ‘leaders oracle’ included on a stele, based on the type of epigraphic evidence we have seen it is definitely plausible that cultic oracles, such as the ones seemingly quoted in Demosthenes’ *Against Meidias* and *Against Macartatus*, came from an epigraphic source, recording particular sacrifices carried out according to an oracle.

Furthermore, it is also possible to imagine the oracle quotation in Aeschines’ *Against Ktesiphon* had an epigraphic record at its origin. From the mid-fourth century onwards, a practice developed to inscribe historical documents onto stone stelae, elaborated from known, imagined or embellished historical circumstances.<sup>327</sup> As part of a growing engagement with and commemoration of the city’s past, especially its fifth-century one, these documents were at times based on earlier original inscriptions but more often than not they invented or elaborated

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<sup>326</sup> καὶ ἐπε[ρέσσ?]-

[θαι τὸν θεόν, εἰ λῶον καὶ ἄμεινον [τ]ῶι δήμῳι τῶι Ἀθηναίων [ποησαμένῳι τὸς κόσμους ἱεροὺς] τῇι Ἀρτέ[μιδι] [μειζονα]ς καὶ καλλίους ἢ ἔῶντι ὥσπερ νῦν ἔχει ἐπερέσθα[ι δὲ καὶ — — — — —]ουλη.κε... The readings and translations of these inscriptions are adapted from *Attic Inscriptions Online*: [www.attinscriptions.com](http://www.attinscriptions.com) [date accessed: 22 May 2017]. Cf. the helpful concordance of Athenian consultations of Delphi in Bowden (2005), 168-169.

<sup>327</sup> Habicht (1961) investigated a number of documents and inscriptions referred to in Athenian oratory from the 340s BCE onwards which purport to be historical but were likely fourth-century inventions. Lambert (2010), 225-226 suggests that the origin of a documentary culture which elaborated historical records and turned events of the past into documents may be traced back to the political upheavals and re-writing of the law codes of the late fifth century.



tradition.<sup>328</sup> A well-known example appears on an inscribed dedication from the Athenian deme of Acharnai (RO 88, third quarter of fourth century), which records two oaths: the ephebic oath, sworn by all of the city's young men, and the oath of Plataea, supposedly sworn by the Athenians before they battled the Persians at Plataea, in 479.<sup>329</sup> While the ephebic oath seems at least based on an oath dating back to the seventh century, the oath of Plataea is considered a fourth-century invention.<sup>330</sup> Another inscription from this time which similarly records a 'historical' document is the Troezen decree, supposedly a decree of Themistocles evacuating the Athenians to Troezen in 480 BCE (ML 23).<sup>331</sup> As discussed above, the historicity of the events of the First Sacred War, the context for the oracle which Aeschines cites in his *Against Ktesiphon*, is questionable. If those events are indeed a fabrication, possibly to justify the sacred wars of the fourth century, it would not be surprising to imagine that an inscription with oaths, oracles and curses purporting to document these events existed – and could have been the source from which Aeschines obtained his depositions of evidence to bring up in 330 at the trial of Ktesiphon. Aeschines' remarks, as we have seen earlier, that they “stand inscribed (ἀναγεγραμμένων) to this day” (Aeschin. 3.113) seems to support this suggestion.

Considering we know orators quoted stelae as evidence in their speeches, that public inscriptions could record oracular consultations, and that there was a practice in fourth-century Athens to inscribe 'historical documents', it is possible to theorise that the oracles quoted in oratory originally were recorded on stelae too. It could even potentially explain why so few oracles are quoted in oratory: having to find relevant oracles from those inscribed on public stelae as part of published laws, decrees and dedications would mean access would be

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<sup>328</sup> Lambert, (2010). See also Thomas (1989), 84-92, especially on the question of how these inscribers saw themselves and how one should read these practices: as forgeries, or as the 're-documentation' of what were considered historical moments only surviving until then as an oral record.

<sup>329</sup> On this inscription see Rhodes and Osborne (2003), 440-448; Kellogg (2008); Krentz (2007) who prefers a slightly earlier date and links the inscription to the anti-Theban sentiment of the 360s BC: see Krentz (2007), 740. Both oaths are also discussed and quoted as evidence in Lykourgos' *Against Leokrates* (Lyc. 1.76-77, 81); Demosthenes tells us Aeschines read out the ephebic oath in court (Dem. 19.303).

<sup>330</sup> Cf. Rhodes and Osborne (2003), 447-448.

<sup>331</sup> Johansson (2001); Meiggs and Lewis (1969), 48-52.

more problematic than if one imagines an archive of oracles easily accessible at the Metroon.<sup>332</sup> This hypothesis regarding public inscriptions has not received enough attention, and while it does not disprove the theories that judicial oracles come from a Metroon archive or from chresmologic oracle collections, it is another possible answer to the question of the origin of oracles which deserves serious consideration.

The second point with regard to the origin of oracles is the question of why it matters. It concerns the significance of the *type* of record collection one envisages as a model for an oracular collection. This is a point often overlooked: scholars are happy to talk vaguely about an ‘archive’ of oracles without considering seriously what this may look like, where it was stored, how it may have been consulted, and most importantly what consequences this has for how one might understand the decision to quote these oracles.<sup>333</sup> If oracles were stored in the Metroon or a similar archive of a city official, this would strengthen the impression, suggested by the speeches discussed above, that oracles quoted in forensic settings were seen as evidence similar to laws. Not only would these two types of sources be parallel in their general character and normative nature, as this chapter has argued, but they would be similar in the way in which they are recorded, stored and consulted too. This is more than merely a practical question: as John Davies emphasises, “archivization is not neutral: it is done for reasons”.<sup>334</sup> Records can reflect social power structures and social values: what is recorded and how it is recorded tell us something about how it is regarded and valued. That the question of the origin of these oracles affects their interpretation is made clear too if we consider the second possible type of oracular records. If one assumes the Demosthenic, Dinarchic and Aeschinean oracles originated from collections of oracles similar to the Bacis or Musaeus sets, this would raise the question of interpretation and the role of the speaker with regard to this. The collections of oracles mentioned in literary sources were delivered by mythical prophets and poets; they are not

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<sup>332</sup> Although there are of course many other factors which could explain the paucity of oracle quotation in oratory: see below.

<sup>333</sup> E.g. Dillery (2005), 218; Pébarthe (2006), 157; MacDowell (2000), 335; Fontenrose (1978), 188.

<sup>334</sup> Davies (2003), 330.

oracles directly delivered by the god through oracular sites such as Delphi and Dodona.<sup>335</sup> They also are closely connected to chresmologues, diviners taken as religious specialists: whether self-proclaimed or recognized, the expertise of specialists such as chresmologues and *manteis* played an important role in the interpretation of these oracle collections. In the stories our sources tell of them, they exercise an interpretative function, either by suggesting particular oracles as applicable to a specific situation (as the evidence from Aristophanes and Herodotus suggests), or they are asked to select and interpret an oracle in order to provide advice on a particular issue (as was possibly the case with state sacrifices).<sup>336</sup> If orators chose oracles from a collection, would this not imply the role they fulfill is similar to that of the chresmologue? Do these speakers suggest any religious or mantic expertise in interpreting divine messages and applying them to the particular context of their speech? Based on the oracles and speeches discussed above, this is not what the orators here do. There is no suggestion of specialist knowledge, as speakers present the quotation of oracles in the same way as they do any other *atechnoi pisteis*: as statements whose meaning is fixed (or at least supposedly so), which therefore need only application to a context, not interpretation. As Parker writes, “oracles, like jewels, were carefully conserved and could be given new settings”.<sup>337</sup> The next section of this chapter will illustrate that Lykourgos’ portrayal of oracles differs from this: the manner in which he presents divine oracular messages emphasizes much more the role of interpretation, and he himself is involved in this. He employs the oracles not only as evidence, but emphatically as sources of religious authority, which boost his own authorial authority as interpreter.

Therefore, the question of oracles’ origin matters. The process of what happens to an oracle after its pronouncement by the Pythia at Delphi or by a priestess of Zeus at Dodona helps explain how and why litigants in court cases could ask a clerk to fetch a written oracle from a

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<sup>335</sup> In Hierocles’ scene in the *Peace*, Homer is quoted alongside Bacis and Sybil (Aristoph. *Peace* 1090). The close connection between poet and prophet suggested by the portrayal of these diviners is significant and something we shall return to in the discussion of Lykourgos’ portrayal of oracles (See 1.2).

<sup>336</sup> On the role of *chresmologues* in state sacrifices, see Bowden (2003a), 266-270 for a reading of the Chalcis decree (IG I<sup>3</sup> 40) together with the regulations for *hieropoioi* (Ath. Pol. 54.6).

<sup>337</sup> Parker (2005a), 108.

deposited vase of evidence and read this out to the judges of their trial. A number of possibilities have been examined: oracles may have been stored in the archives at the Metroon, with every new state consultation to Delphi, Dodona or other oracular site adding to the collection. Possibly other oracles were to be found here too, ones delivered not by gods at oracular sites but by legendary prophets. A second possibility is that oracles existed as collections assembled, consulted and interpreted by religious specialists such as *chresmologues*. A third possibility is that oracles were found on the public inscriptions which dotted Athens' public spaces – in particular oracles which dealt with cultic innovations and regulations, and oracles which may have been part of 'historical' inscriptions documenting pseudo-historical events. Of course, it is possible that oracles were remembered, recorded and consulted in a multitude of different ways in classical Athens – maybe even in all of the above. In any case, considering the origin of oracles and the manner in which they are presented, as written depositions of evidence, allows us to develop a better picture of the role of oracles in oratory. It is noticeable that neither the format of presentation nor the function of the oracle in the speech emphasise the oracle as a source of religious authority. Dillery has argued that "writing introduces into the understanding of divine revelation an intermediary stage, separating the divinatory moment, if you will, from its interpretation and application".<sup>338</sup> By presenting the oracles as written-down texts, the orators introduce an element of time, distancing the oracular pronouncement from its application, and allowing for a different presentation of the oracle as a source of authority: they are presented as normative, law-like pieces of evidence, in need of application, but not necessarily interpretation.

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<sup>338</sup> Dillery (2005), 224. Dillery focuses on the suggestion of tampering which, he argues, written prophecy brings along. However, this is not the main point: anxiety about fraud and human tampering can accompany divination in any form, including when it is presented in oral format. Furthermore, the evidence from oratory shows that the suspicion of written oracles found in Aristophanic sources should not be taken too seriously: if it had been considered suspicious to bring in older oracles, it is doubtful these speakers would have done so, even if the content of the oracles quoted was so general it would be hard to consider them dangerous or controversial.

## 2.3 Oracles as mantic narratives: Lykourgos' *Against Leokrates*

### *The oracles*

Lykourgos' speech *Against Leokrates* completes the collection of forensic orations in which litigants discuss, present and employ oracles. In 331 BCE Lykourgos brought a charge of treason (προδοσία) by εἰσαγγελία against Leokrates, an Athenian citizen who had left Athens in the wake of the city's defeat by Macedon at Chaeronea, in 338.<sup>339</sup> Leokrates reportedly sailed off to Rhodes, together with his mistress, where, according to Lykourgos, he spread false rumours, alleging the city of Athens had suffered complete destruction (Lyc. 18). He then moved to Megara and settled for a number of years as a corn trader (26). Lykourgos alleges he sold his belongings in Athens and arranged for his debts to be paid, indicating his departure from Athens was meant to be permanent (22-23). However, in 331 Leokrates returned home after seven years abroad (45, 58) and subsequently found himself accused of treason by Lykourgos. Lykourgos was administrator of the city's finances from 338 to 326 BCE ([Plut.] *X Orat.* 841e-f), and his influence on Athens is observable through epigraphic evidence for legal proposals and for his involvement with a number of public building works.<sup>340</sup>

The speech *Against Leokrates* is rife with religious sentiment and references to the gods, sacred places and piety, and presents rich offerings for the examination of religion in the speeches of the Attic orators. Past studies have often explained the overt religiosity of the speech as part and parcel of Lykourgos' fervent patriotism, understanding the oration as a straightforward and unsubtle panegyric of Athens employed to emphasise Lykourgos' accusation of treason.<sup>341</sup> Recently, however, scholars have approached the speech with more awareness for the question

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<sup>339</sup> On the dating of the speech see Harris (2001), 159.

<sup>340</sup> On Lykourgos' influence on Athens see Humphreys (2004); Faraguna (2011). On the Lykourgan building programme in particular see Hintzen-Bohlen (1997) and on the epigraphic evidence see Lambert (2000). Parker (2011), 47 goes so far as to say "we can even speak of a 'Lykourgan policy' which is rare", though see Brun (2005), who challenges the pre-eminence of Lykourgos as reformer and legislator in what has become known as the 'Lykourgan period'.

<sup>341</sup> Burt (1954), 10; Faraguna (2011), 73; Vielberg (1991), who also attempts to examine the speech's religious discourse in relation to the orator's personal religiosity.

of representativeness: arguing either that the speech should be considered as orthodox in views, if amplified in tone, as Peter Liddel does with regard to the speech's civic ideology or Bernd Steinbock on the subject of the portrayal of the *ephebeia*, or – oppositely – considering the speech rather strikingly heterodox, as Danielle Allen has argued with regard to the oration's approach to punishment.<sup>342</sup> Lykourgos' employment of oracles has not received much attention for its idiosyncrasy: it is, as we shall see, substantially different from the practice found in other orations described above.

Lykourgos discusses four oracles in his speech and, contrary to the oracles discussed so far, these are not read out by a clerk but narrated by the litigant himself, integrated into his oration: these oracles concern the death of Kodros, a mythical Athenian king (Lyc. 83-88); the punishment of Kallistratos (93), a fourth-century Athenian general; the tale of Erechtheus, another mythical figure; and the Spartans' selection of the legendary Athenian poet Tyrtaeus as their leader (105-107).

Oracles, Lykourgos makes clear throughout the speech, are sources of divine will. The oracle given to Kallistratos, discussed already in the opening chapter of this thesis, illustrates how these signs could function. When the exiled Kallistratos consulted the Delphic oracle for advice on a course of action and took the answer that he would receive fair treatment “according to the laws” as an encouragement to return to Athens, he was condemned to death by the Athenians in 361 BCE (Lyc. 1.93).<sup>343</sup> As Lykourgos notes, “rightly so, for ‘fair treatment by the laws’ is, in the case of wrongdoers, punishment. And thus the god justly allowed those who had been wronged to punish the offender” (ὁ δέ γε θεὸς ὀρθῶς ἀπέδωκε τοῖς ἡδίκημένοις κολάσαι τὸν αἴτιον) (93). The previous chapter explored how conflicting authorities are presented in this story: the command of the oracle advocates the authority of the laws, while the oracle's interpretation by Kallistratos, on the one hand, and by the Athenians (and Lykourgos, so many

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<sup>342</sup> Liddel (2007), 106-108; Steinbock (2011), 312; Allen (2000), 5-6.

<sup>343</sup> On Kallistratos see Sealey (1956).

years later), on the other, diverge. The story suggests that gods can break the rules of *asylia* if they wish to do so, choosing instead the laws of the state and the Athenians as their executors of justice.<sup>344</sup> Of course, it also shows the power of oracular narratives as a tool to justify human behaviour which may be considered otherwise problematic. The oracle given to Kallistratos illustrates a point Lykourgos makes, that “the guidance (ἐπιμέλειαν) of the gods presides over all human affairs” (94).<sup>345</sup> More specifically, it shows the gods provide opportunities for those wronged to punish those who have wronged them. Similarly to Kallistratos, Leokrates had recently returned home after a long period abroad. Lykourgos thus draws a parallel between his present opponent and the famous Athenian general, and designates the present trial of Leokrates as a comparable opportunity for punishment provided by the gods. As he says of Leokrates’ voluntary return after those seven years abroad: “I think that surely some god (θεόν τινα) brought him back especially for retribution (τὴν τιμωρίαν)” (91).<sup>346</sup> The action of taking Leokrates to court for treason thus receives confirmation from a higher authority – it was divine action which authorised Lykourgos’ charge of treason and the subsequent conviction which he hopes the judges will vote for. The ambiguous language of the oracular message, and the subsequent misinterpretation of it by Kallistratos, amplify the authoritative and divine nature of Kallistratos’ punishment.

The other three oracles discussed in the speech similarly inform Lykourgos’ listeners of the attitudes and opinions of their gods. Lykourgos recounts that once, when the Spartans were at war with the Messenians, “the god advised them to take a leader from us; for so they would defeat their enemies” (105). The Spartans followed this advice and appointed the Athenian poet Tyrtaeus as their leader, who helped them defeat their enemies and establish a training system

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<sup>344</sup> Naiden (2006), 196-197 reads the Kallistratos story differently: he takes it as proof that “supplication and the dictates of the laws are mutually compatible” and that Lykourgos “takes pain to say that this action (execution of the suppliant) has a rationale in Attic law and also the support of Apollo” (196). But it is clear from Lykourgos’ telling that the relationship between these authorities does not function so compatibly: the oracle is rather the mechanism which justifies the Athenians’ disregard of *asylia* in favour of their *nomoi*: cf. Chapter One. See Hdt. 1.156-159 and Chaniotis (1996), 75-79 for other examples of the use of oracles to suspend suppliants’ status.

<sup>345</sup> Cf. Hyperides *Funeral Speech* 43.

<sup>346</sup> Note the similar sentiment in [Lys.] 6.19, where the prosecutor suggests the gods were guiding Andocides to destruction. On divine action see also Chapter Five.

for their young men (106). Lykourgos highlights the significance of this: “And yet if the god decided (ὁ θεὸς ἔκρινε) that the leaders sent from Athens were better than the two descendants of Herakles who in succession reign at Sparta, must we not conclude that nothing could surpass the valour of our ancestors?” (105). The god here does not only “advise the Spartans” (ἀνεῖλεν ὁ θεός), he also “decided” (ὁ θεὸς ἔκρινε) that the Athenians were better (Lyc. 105); Lykourgos thereby presents the god as taking action to obtain the desired outcome. The oracle is again an expression of divine attitudes; this time it is presented as evidence of the gods’ recognition of Athenian superiority over the Spartans. This superiority is an important and ever-present theme throughout Lykourgos’ speech, as he presents a picture of Athenian patriotism, piety and ἀρετή as an inverse of Leokrates’ desertion, cowardliness, impiety and treason.<sup>347</sup> The oracle received by the Spartans, presented as divine confirmation of Athenian pre-eminence, is thus employed by Lykourgos to bolster his patriotic rhetoric.

The notion that the gods support and endorse the patriotic picture of Athenian superiority painted by Lykourgos is also suggested by the other two oracles found in the speech, delivered to Kodros (83-88) and Erechtheus (98-101). In these stories, the Athenians are threatened by invasions from the Peloponnesians and the Thracians, respectively. Both oracles offer an opportunity for the Athenians to defeat their invaders, if they are willing to make a certain sacrifice (the lives of Kodros and Erechtheus’ daughter, respectively). In both stories these sacrifices are made. When Kodros is told of the oracle concerning his death by a Delphian called Kleomantis, Kodros “told the Athenians to note the time of his death” and, making use of a disguise, engineered a situation in which he was killed by an oblivious Peloponnesian (86).<sup>348</sup> Similarly, Erechtheus “obeyed the god, did this [the sacrifice of his daughter] and drove the invaders from the country” (99). Erechtheus was a mythical king of Athens, connected to Poseidon. According to his biography ([Plut.] *X Orat.* 843e), Lykourgos’ own family held the

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<sup>347</sup> See for example Lyc. 1.1-2, 26, 27, 35, 147.

<sup>348</sup> Kleomantis’ name is a “speaking name”; compare for example with Theoclymenus, ‘god is renowned’ in Homer *Od.* 20. 350. See also Steinbock (2011), 280-281 on the patriotic nature of the Kodros story; Hesk (2000), 93-97 on the portrayal and praise of military deceit in Lykourgos’ narrative of the episode.



priesthood of Poseidon Erechtheus, which traced its origin back to Erechtheus. The city of Athens and its citizens are thus saved on both occasions and - it could be argued - this is due to the opportunity offered by the oracle. Since the oracles Lykourgos discusses are all presented in narrative forms, rather than, for example, as depositions of evidence, they illustrate the complexity of oracular consultation, and the ambiguous tension created by, on the one hand, the inevitability of its realisation and, on the other hand, the necessity of knowledge for its (self)-fulfilment. In the Kodros story, for example, Lykourgos specifies it is the knowledge of the oracle's existence which guarantees its realisation. Once the Peloponnesians are told that they have killed Kodros, "they restored the body but retreated, knowing (γνόντες) that it was no longer possible (δ' ὡς οὐκέτι δυνατόν) for them to occupy the country" (87). It is the attitude to the knowledge of the oracle which allows for the oracle's fulfilment, highlighting the paradox inherent in the antagonism of rationality and irrationality in oracular consultation.<sup>349</sup> The pronouncements from the oracle only become predictive through the divine authority invested in them by those who hear the oracle, both Kodros himself and the Peloponnesians. As the oracle is perceived as the words of the god, it is by pronouncing these words that the god, though not directly predicting, still inescapably creates victory for the Athenians. The words of the oracle do not themselves predict the future, but they create it, as the authority which the oracle carries means its command is followed and the events it describes become reality. The oracle is a source of knowledge of the will of the gods and at the same time the tool through which this divine will is turned into reality. In consequence, the oracles function as evidence of divine support for Lykourgos' city and his fellow citizens, both in the mythical past and in the present.

In his speech Lykourgos thus utilises oracles by building upon their identification as authoritative sources of divine will in order to attribute to the gods particular actions and attitudes which endorse his arguments against Leokrates. He uses the oracles to present Athens as favoured by the gods, in particular Apollo. This fits in with the slow elaboration at Athens in

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<sup>349</sup> Burkert (2005), 31.

the late fourth century of the cult of Apollo Patroos, ‘ancestral’ Apollo.<sup>350</sup> Lykourgos also employs oracles to ascribe to the gods a specific attitude regarding the punishment of wrongdoers, to stage the present trial of Leokrates as an opportunity for revenge and justice, deliberately provided for by the gods: the gods themselves are portrayed as active agents in the enforcement of law, as we shall return to in Chapter Five. As indicators of divine will, oracles are thus employed by Lykourgos to urge the judges of the trial to comply with the wishes of the gods in the verdict they are to deliver.

Thus far, it has been shown that Lykourgos’ oracles are employed as sources of knowledge of divine will, as signs of divine action and as revelatory elements within a narrative structure which amplify dramatic tension. A fourth function which oracles execute in Lykourgos’ speech is as παραδείγματα (examples) with a didactic function. Throughout his speech Lykourgos makes liberal use of references to the past. These come in different formats and range from formal documents, which Lykourgos has read out in court as evidence – such as decrees, laws and oaths – through stories and digressions from Athens’ historical and mythical past, to quotations of poetry, covering epigrams and the genres of epic and tragedy.<sup>351</sup> While the formal documents evidently have a specific role to play as depositions of evidence, the latter category of stories and poetry are awarded just as much importance to the main arguments of Lykourgos’ speech. He sees them not as unnecessary digressions but important παραδείγματα, with a didactic function.<sup>352</sup> The four anecdotes concerning oracles are included in this. Introducing

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<sup>350</sup> See Hedrick (1988); Lawal (2009); Bowden (2005), 57-58. Lykourgos himself is linked to the cult through the report that he proposed honours for Neoptolemus, who had promised to gild the altar of Apollo in the Agora, thought to be connected to the temple of Apollo Patroos: ([Plut.] *X Orat.* 843f). On Apollo Patroos as a cult specifically associated with the *phratries* see Lambert (1993), 211-217. Cf. also Demosthenes’ *On the Crown*, which was delivered soon after Lykourgos’ speech, which invokes “Pythian Apollo (τὸν Ἀπόλλω τὸν Πύθιον), who is ancestral (πατρῷός) to the city” (Dem. 18.141).

<sup>351</sup> Decrees: the decree of Hyperides (37), the decree proposed by Critias on Phrynichus’ treason (114), decree and inscription concerning traitors (118), decree concerning traitors who withdrew to Decelea (120), decree relating to the man executed in Salamis (122), decree of Demophantus on tyranny (125) and a decree relating to piety (146). Law of the Spartans concerning traitors (129). Ephebic oath (77) and Oath of Plataea (81). While some of these are contemporary to the trial, the majority are historical.

<sup>352</sup> Cf. Allen (2000), 26-29; Lambert (2010) and Steinbock (2011): the latter analyses how Lykourgos employs stories such as the Kodros one to strike an emotional chord with the audience and teach them about patriotic and civic duty, and he suggests Lykourgos’ oration becomes “a *paradeigmata* to inspire patriotic devotion” itself (312).

the story of Kodros, Lykourgos says: “I wish to recount to you a few past episodes (μικρὰ τῶν παλαιῶν), and if you use (χρώμενοι) these as examples (παραδείγμασι), you will reach a better verdict in both this case and in others” (83). The episodes which Lykourgos recounts – the majority of which are concerned with Athens’ past – present the listener with examples of good conduct (in contrast to Leokrates’ behaviour) or examples of treason (in which the similarities with the present case are highlighted) or examples of judgement and revenge (which serve as inspiration for the judges). As Lykourgos states, “Teaching (διδάσκειν) by means of many examples (πολλῶν παραδειγμάτων) renders your verdict (τὴν κρίσιν) easy” (124). The historical and mythical stories thus operate as guiding precedents in the trial of Leokrates. Yet they are also didactic in a more general sense, as they are supposed to inspire all Athenian citizens in all their behaviour. Danielle Allen has pointed out the strong didactic tone discernible throughout the speech, by examining Lykourgos’ discussion of the justification of punishment.<sup>353</sup> She demonstrates that in Lykourgos’ speech the purpose of punishment is not retribution – as is usual in speeches where the prosecutor has a more personal involvement with the case – but rather reformation or prevention. This is illustrated by his preference for the use of the term κολάζειν instead of δοῦναι δίκην or λαβεῖν δίκην, thereby giving the act of punishment an educational function.<sup>354</sup> This didactic attitude is also discernible in Lykourgos’ use of oracles as παραδείγματα.

### ***The authority of mantic narratives: divine origin and human interpretation***

As the above analysis has shown, the oracles in *Against Leokrates* stand out due to their nature: they appear to be of a more ‘literary’ type. Three of Lykourgos’ oracles are set in a mythical past and concern heroic figures: the kings Kodros and Erechtheus and the legendary poet Tyrtaeus. The fourth oracle which Lykourgos recounts in his speech is slightly different, as it was supposedly delivered not so long ago, in living memory – he says – of the older members of the

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<sup>353</sup> Allen (2000).

<sup>354</sup> Allen (2000), 12, 18-19.

judges listening to his speech, to a recipient, Kallistratos, who was a historical figure. However, the historicity of his life, exile and death do not necessarily prove the historicity of the oracular consultation – as we have seen, this detail could have been a later addition to his story, added for reasons which may have been political or narratological, including a satisfying inevitability to the statesman's downfall. Besides, even if not set in mythical times, the Kallistratos oracle has a 'literary' character thanks to its ambiguity: it is as enigmatic and ripe for misinterpretation as any Herodotean oracle. The form of the messages also binds Lykourgos' four oracles together: they are all predictive in nature. The divine pronouncements each contain a conditional element as the message tells the consulter what will happen if they fulfil the received specification. The oracles are all also presented in their original context of consultation: Lykourgos pays attention to the reason why these characters choose to employ divination as well as the process of its subsequent interpretation.

These characteristics combine to make Lykourgos' oracles distinct from the others found in judicial speeches. A dichotomy manifests itself in our sources, between the oracles in Lykourgos' speech and those in the speeches of Demosthenes, Dinarchus and Aeschines. The difference is visible with regard to the context of the oracle's presentation (whether contextualised or not), the type of statement the oracle presents (command or prediction), as well as the format of its presentation in the speech (as written deposition or narrated by the speaker).

How should one understand this dichotomy? One might argue that the singularity of Lykourgos' presentation of oracles is simply a natural consequence of the fact that Lykourgos is talking of oracular consultations which have less historical grounding, and therefore that there would not have existed any actual physical record of these oracles to deposit as evidence at the *anakrisis*.<sup>355</sup> The Kallistratos oracle was supposedly delivered to a historical, not mythical,

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<sup>355</sup> Another potential argument to explain Lykourgos' chosen method of presentation of oracles – and also poetry – in text, rather than as evidence, was because he added these to his arguments only after the *anakrisis*, as it is thought to be forbidden to add new evidence to one's speech after the sealing of the *ekhinoi* at the *anakrisis*: see Thür (2005),

character, yet one could maintain the historicity of his exile and subsequent return to Athens does not necessarily apply to the oracle consultation too. Lykourgos thus might not have had any other option than to present the oracles in text. However, this is not a sufficient explanation for the difference. Firstly, we have seen that the practice and realities of oracle recording and storage in particular, as well as the preservation and consultation of any kind of records and archives in general, is not well known. This makes it difficult to rule out the possibility that oracles, such as those quoted by Lykourgos, could have somehow been preserved not only in oral format, but in a written one too. More significant, however, is how the distinction of the Lykourgan oracles extends far beyond their unique format of presentation. Besides the differences mentioned above already, the authority which these oracles are assigned deviates too.

In Lykourgos' *Against Leokrates*, as opposed to the other speeches this chapter discusses, oracles are compared not to laws, but to another type of evidence which Lykourgos quotes frequently and at length, namely poetry. Lykourgos says that:

laws are too brief to give instruction: they merely state the things that must be done;  
but poets, depicting (μιμούμενοι) life itself, select the noblest actions and so through  
argument and demonstration (μετὰ λόγου καὶ ἀποδείξεως) persuade people (Lyc. 102).

In its persuasive, didactic function, poetry is similar to oracles. Lykourgos sees the stories about the past, which include the four anecdotes concerning oracles, not as unnecessary digressions but as important παραδείγματα. As we have seen, Lykourgos introduces the story of Kodros' oracle by explaining it should be used as an example (παραδείγμασι χρώμενοι) to "reach a better verdict in both this case and in others" (Lyc. 83).

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156 on the basis of Alan Boegehold's new publication of an *ekhinos* lid. Nonetheless, the argument that Lykourgos' practice should be explained as a workaround for this rule is conjectural and does not fully explain the different presentation of these oracles.

Secondly, the decision to read out evidence oneself or as deposition could also be influenced by time allocation – although whether this would have done so in practice is debatable – depositions of evidence are usually very short. But in any case this is not relevant here, as the clock is only stopped during the reading of depositions in private trials (cf. for example Lys. 23.4; Is. 2.34; Dem. 45.8), not in public ones: see MacDowell (2000), 23

Both poetry and oracular pronouncements can function as didactic paradigms, then. Lykourgos however takes this comparison even further, in a remarkable statement made in his introduction to a fragment of unattributed poetry. He says: “personally I value as the utterance of an oracle (ὥσπερ χρησμοῦς) these lines, composed by ancient poets and handed down to posterity” (Lyc. 92). This comparison between oracles and poetry is similar to one which Aeschines makes in his speech *Against Ktesiphon*, following the recital of a fragment of Hesiod’s *Works and Days*: “if you disregard the poet’s meter and examine only his thought, I think this will seem to you to be, not a poem of Hesiod, but an oracle (χρησμός) directed against the politics of Demosthenes” (Aeschin. 3.136). Aeschines too highlights the function of poetry as a useful paradigm for human behaviour throughout his orations (Aeschin. 3.135; also 1.129-130, 153), and here presents poetry as comparable to oracles. This is similar to Lykourgos, who implies both oracles and poetry are left behind for those who come after, thus making them παραδείγματα for future generations. However, in comparing poetry with oracles, Lykourgos is not only referring to the fact that both are “handed down to posterity”. He also suggests a comparison of their purposes – both can be used as didactic paradigms (poetry: 102; oracles: 82, 124) –, their presentation (poetic fragments, like oracles, are read out in the narrative) as well as their origin: both types of discourses are divinely inspired and are presented as sources of religious authority.

Lykourgos’ oracles are, as we have seen, more contextualised than Demosthenic ones: the narrative Lykourgos recounts includes the moment of consultation; the oracles have specific recipients; and some of them are ambiguous, or lead to incidents of misinterpretation (the Kodros one and Kallistratos one especially). Oracles here are cryptic messages from the gods, and Lykourgos uses this ambiguity not only to negotiate human unknowability of the will of the gods, but also to construct his own authority as interpreter of these mantic narratives. In many ways then, these oracles resemble somewhat the mantic narratives of oracular consultation found in Herodotus’ *Histories*.

Recent studies of the oracle stories in Herodotus have sparked interest in the techniques the historian uses to create the text's argumentative structure, and the tools of persuasion used to construct the authority of his own voice as narrator. Julia Kindt and Elton Barker have argued Herodotus' mantic narratives play an important role in the construction of authorial authority. In his analysis of the Croesus logos, Barker sees oracles as a tool used to formulate an opposition between two forms of authority: that of the gods, versus the King who interprets (and often misinterprets) these oracles.<sup>356</sup> Kindt takes this argument further, developing this into a general analysis of oracles as "vehicles for statements which require a greater authority than (Herodotus) himself can possess".<sup>357</sup> Oracles can be used to approve changes in power, legitimise a political order, condemn impious behaviour, etc.: they "introduce another authoritative voice into the historian's narrative".<sup>358</sup> Kindt also posits the ambiguity and misunderstanding which characterises many Herodotean oracles (such as for example Croesus') can be understood as an illustration of the divide between mortal and divine knowledge and perspective. She argues that obscure oracular language "represents the very dichotomy between the gods and mortal men".<sup>359</sup> As Heraclitus famously says: "the (oracular) god neither says nor conceals, he indicates" (ὁ ἄναξ, οὐδὲ τὸ μαντεῖόν ἐστι τὸ ἐν Δελφοῖς, οὔτε λέγει οὔτε κρύπτει ἀλλὰ σημαίνει: Heraclitus 22 B93 DK). Ambiguity shines a spotlight on human unknowability, both of the future and of divine will.

These two ideas, that oracles can function as vehicles for statements which require greater than human authority, and that these oracles and their ambiguity highlight the uncertainty of human knowledge, can help us understand Lykourgos' distinctive oracles. As we have seen, he employs the oracles of Tyrtaeus, Kodros and Erechtheus to place an affirmation of Athenian pre-eminence into the mouth of the god (through the Pythia). Furthermore, by presenting oracles in narrative forms, rather than as depositions of evidence, Lykourgos can illumine the

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<sup>356</sup> Barker (2006).

<sup>357</sup> Kindt (2006), 45.

<sup>358</sup> Kindt (2006), 35.

<sup>359</sup> Kindt (2006), 37.

complexity of oracular consultation, and the ambiguous tension created by, on the one hand, the inevitability of its realisation and, on the other hand, the necessity of knowledge for its (self)-fulfilment. Similar to Herodotean oracles, these divine messages illustrate the complexity of fate, punishment and divine intervention.

Casting oracles as written depositions of evidence focuses attention on the exact words of the message: it not only presents the oracular text as an exact quotation of the god's words, but by separating it out from the speaker's regular speech and by giving it another voice, this format also emphasises the words of the oracle. Oracles discussed by Lykourgos are, contrastingly, part of a larger narrative: the oracle itself is not quoted word for word, as what is important here is rather the interpretation of the oracle, which is exactly what Lykourgos himself explains.<sup>360</sup> In an illuminating study of the poetic quotations of Homer in oratory, Guy Olding has proposed that whether evidence is read by a clerk or presented by the speaker himself is a significant distinction.<sup>361</sup> He examines the three Homeric quotations of Aeschines' *Against Timarchus* which are the only poetic quotations in all of Aeschines' speeches to be read out by the clerk, and not by Aeschines himself. Olding argues that this is a conscious and deliberate decision by demonstrating that these verses differ slightly from the canon of Homer: the quotations of Aeschines present a reading of the relationship of Patroclus and Achilles which fits better with the orator's arguments against Timarchus. Having the verses read out by a clerk and thereby offering them as written evidence as well as corroborated by another voice, thus appears to be "a tactic to place his evidence and, by implication, his interpretation beyond criticism".<sup>362</sup> Lykourgos' format of discussing oracles can be understood similarly as a conscious decision, though here he attempts to achieve the opposite effect: by presenting the oracles in his own voice, he links them to his own authority as interpreter of these divine signs.<sup>363</sup>

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<sup>360</sup> Aeschines' story of the First Sacred War shows awareness of the distinction between these two formats of presentation, though in relation to a curse, not an oracle: he both himself proclaims the curse, and then has it read out by the clerk (Aeschin. 3.110-112).

<sup>361</sup> Olding (2007).

<sup>362</sup> Olding (2007), 166.

<sup>363</sup> Allen (2000), 24-25 also argues that Lykourgos uses a different authoritative voice in his portrayal of justice and punishment, considering he does not present himself as the 'disinterested public prosecutor'.



Lykourgos then utilises oracles to say something about the gods – about divine will and divine action – as well as about the uncertainty which the constraints of human knowledge of the divine carry with it. Oracles here are sources of religious authority, which Lykourgos uses to imbue his statements with a sense of divine authority too. As the narrator and –importantly – interpreter of the gods’ messages, he strengthens his claim to authority (which his speech makes to his audience) with a sense of religious expertise. This stands in contrast to the oracles presented by Demosthenes, Aeschines and Dinarchus, which are used not so much as source of divine will, but as evidence for very particular arguments about human behaviour, thought or will, specifically of one’s opponent. Oracles here are sources of authority similar to laws: their origin is undiscussed and unimportant (although may be ambiguously both human and divine), as it is only in their application that they become authoritative. Like laws, they gain their authority from their relation to the truth: they are considered proof of the facts the speaker states. The strategy of presenting a quotation can therefore be a conscious one, allowing the speaker to assign a different kind of authority – legal vs divine – to the evidence he introduces. The different way in which Lykourgos appropriates oracles, using the tradition of the ambiguity of oracular divination to present his oracles as sources for divine will, mediated and interpreted through his own narrative, functions as example of the variety and innovation which speakers in the Athenian Assembly and law courts could employ, and the complex ways in which they make use of sources of religious authority both to make their case, and to say what they do about the divine. This case study should illustrate the need to tease out these differing constructions of authority we find in the religious discourses of these speeches.

## **2.4 Conclusion**

The analysis of references to oracles in Attic oratory has allowed us to sketch a picture of their presentation, in which Lykourgos’ treatment of oracles stands out from the rest. Lykourgos presents oracles in a format more similar to ‘mythical’ oracles: they have a particular, named

recipient; they are often ambiguous or lead to misinterpretation at least, but are eventually fulfilled. They are read out by Lykourgos himself during his prosecution and are also compared to poetry. This differs significantly from oracles found in the other speech-writers, which do not detail a specific recipient or refer to the original oracular consultation but are rather re-applications of previously recorded oracles. The choice of different media – oral vs written, as part of the narrative vs as deposition – impacts the way these oracles are utilised. Recent studies on divination have moved their focus away from the process of oracular consultation itself to the afterlife of the divine signs which these processes create, not only by focusing on the role of oracles as narrative tools, but also by emphasising the performative aspects of divinatory practice and its role as a participative tool.<sup>364</sup> This study similarly has examined the afterlife of oracles: by decontextualising these pronouncements from their original episodes of consultation, the orators create pieces of evidence which can be reframed and re-used in a variety of ways: oracles are either divinely inspired poetry, or law-like statements of godly will, depending on their presentation as oral pronouncement, or written deposition. They are therefore also presented as authoritative in different ways: Lykourgos' oracles carry religious authority, as sources of divine will, while the other oracle pronouncements are presented as sources of authority similar to laws – they are employed to make very specific points, not necessarily related to divine will or to the divine character of oracles. The re-appropriation of oracles adds an additional layer to these orators' speeches: unlike laws or poetry, which are both designed specifically to be applied to numerous different occasions, oracles are usually in the first instance the result of a particular moment of consultation, and have a specific addressee. The reproduction of such personal messages in forensic speeches as general, normative oracles therefore includes a re-assignment of their use from the personal to the collective. This plurality in the way in which oracles can be presented – both as general law-like maxims, and mythical 'literary' stories – provides an illustration of the flexibility and variety of ways in which oracular divination could be understood, used and rhetorically exploited in fourth-century Athens.

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<sup>364</sup> Divination as performative: see Rüpke (2013), 9; Bowden (2015), 91-92.

Important too is what the fact that it is possible in forensic speeches to present both oracles which are of a 'literary' poetic type (mantic narratives), side by side with more 'law-like' oracles, tells us about the role of divination in classical Athens. It suggests that the way in which the dichotomy between ambiguous, cryptic literary oracles and 'historical' oracles of epigraphic sources is often perceived – namely as a dichotomy between fictitious oracles completely unrelated to real practice, and historical oracular consultation – is too simple. The fact that oracles can be presented and used as tools of persuasion in the public discourse of forensic oratory in such different ways by different orators, suggests that one should not value one type of oracles as more 'real' and 'realistic' (historical) than another. The idea that 'literary' oracles as less 'true', and further removed from the realities of oracular consultation, is problematic: in the orators it is precisely the ambiguous, mythical, old oracles – presented orally, not in written form – which are used emphatically as sources of divine will, and as such carry religious authority. Lykourgos uses the ambiguity of oracular responses to amplify their authoritative nature and to present them as sources of evidence for divine will, in order to attribute to the gods particular actions and attitudes which endorse and authorise his arguments against Leokrates. By providing "glamorous" examples, both of misinterpretation and of dormant oracles, these 'literary oracles' illustrate to Lykourgos' audience of judges 'the guidance of the gods' in human affairs, and they serve themselves as a reinforcement of the divine authority of divination.<sup>365</sup>

The analysis of these oracles has also raised questions concerning the typology of divine signs, and the relationship between, and respective value of, oral discourse and written texts. It is important to remember the performative setting and oral delivery of these speeches which we read as written-down speeches. The dislocation between the text's performance and how we experience it is especially striking when one considers the quotation of documents, such as these oracles. Where we see written texts, pockmarked with empty space for missing

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<sup>365</sup> Harrison (2000), 157 makes this point with regard to the oracles in Herodotus.

quotations, the Athenian audience hears an oral speech, interspersed with the ceremonial retrieving and reading of records – whose written nature forms part of the authority these texts have as piece of evidence in a legal trial. Lykourgos presenting oracles in texts, rather than as such written depositions, helps him present them as a very different kind of information, with a different kind of authority.

## Chapter Three: Dreams

This chapter continues the investigation into sources of religious authority and how these function in Attic oratory. While the previous chapter examined oracles, this chapter concentrates on a different type of divine sign, namely dreams. More precisely, the chapter revolves around a single vision: it will present an in-depth analysis of Hyperides' speech *In Defence of Euxenippus*, the only oration preserved from Classical Athens which discusses an occasion of oracular divination by way of a dream.<sup>366</sup> Hyperides' oration recounts a dream experienced by an individual at the sanctuary of Amphiaraos in Oropos by order of the Athenian Assembly, which is used to resolve an issue concerning the demarcation of land as sacred or non-sacred. It is a case of divinatory incubation – the god is consulted in order to ascertain knowledge of divine will – which is unusual: most of the evidence for the rite of incubation concerns its therapeutic function, in which it is used for individual, personal purposes, more specifically for healing. Despite its singularity and exceptionality, the incubation dream described in Hyperides' speech deserves detailed attention, as it can serve as case study for the way in which divine signs functioned in political and legal decision-making in fourth-century Athens. While oratory yields little detail of other cases in which divine signs played a part, epigraphic evidence preserves such traces better: we know that the Athenians consulted oracles on issues of land allocation (e.g. Sacred Orgas), as well as on other types of issues (such as colonisation and cult regulations), as discussed in the previous chapter. Furthermore, fifth-century evidence from comedy and historiography, as well as references in the *Athenaion Politeia*, make it clear that divine signs were discussed in the Assembly.<sup>367</sup> While

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<sup>366</sup> The only other references to dreams of any kind in Attic oratory are a tale of Helen visiting Homer in a dream in Isocrates' *Helen* (Isoc. 10.65) and two accusations against Demosthenes by Aeschines: Aeschin. 2.10 alleges that Demosthenes in his prosecution speech told a story about a dream of a priestess in Sicily – this is not preserved in Demosthenes' *On the False Embassy* though. In the second accusation Aeschines accuses Demosthenes of, upon hearing the news of Philip's death, pretending he had received this news directly from Athena and Zeus in a dream (Aeschin. 3.77, 219).

<sup>367</sup> Though relatively sparse, evidence suggests this must have happened frequently. See references in the previous chapter.

the case described by Hyperides' speech might therefore be unique in the corpus of oratory, it can nonetheless serve as a case study for the use of divine signs in political and legal decision-making in Athens. As an informative illustration of the problems we face interpreting the working of, motivation behind and attitudes to oracular consultation, Hyperides' speech has not received the attention it deserves, something this chapter aims to correct.<sup>368</sup>

Furthermore, the speech affords us a rare glimpse into the *process* of how divine signs are employed and understood, by presenting the different stages involved: from the type of issue which requires oracular advice, to the decision to consult the oracle; from the functioning of the divinatory consultation itself, to the subsequent interpretation of the sign and the final resolution of the problem. While the case of Euxenippus and his dream may be unusual, it is a fascinating source for how authority can be negotiated and how different sources of authority function with regard to one another, as well as with regard to different sites of authority, such as the god's sanctuary itself, religious specialists and the Athenian Assembly, for example. Who eventually makes the decision regarding the disputed land, and how do they do so? Hyperides' speech illuminates the role of divine signs and their relation to authority, by illustrating how divinatory devices, and the expressions of divine will they transmit, relate to human authority, which in forensic and deliberative oratory is invested primarily in the *demos* and its Assembly and Council, as well as in the concept of law itself. While the oracles in the previous chapter were quoted in forensic speeches as evidence or stories, presented either as divine messages or law-like norms, the divine sign under discussion here carries a rather different relationship to the speech in which it occurs: as we shall see, rather than playing the part of evidence for the speech's argumentation, the dream is part of the substantive issue itself, which subsequently gives rise to the trial.

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<sup>368</sup> Martin (2009) does not discuss the speech or its dream, nor do the general studies of divination by Beerden (2013) and Trampedach (2015), who furthermore make no mention of the oracular cult of Amphiaraos at all. Flower (2008), who focuses on seers, considers Amphiaraos in his role as *mantis* in Aeschylean tragedy but does not refer to his oracular cult. Iles Johnston (2008), 90-95 examines Amphiaraos' cult but presents it as a healing one and does not evaluate the evidence, such as Hyperides' speech, which describes the cult's oracular function too.

After a brief analysis of the speech, the role of religious argumentation within this, and the political context of Athenian interest in Oropos, this chapter will look at what Hyperides' oration tells us about the assignment of authority in the religious decision-making and oracular consultation process. In order to do so, it will be necessary to attempt to reconstruct the details of the speech's narrative, as Hyperides' account of the events leading up to the case are rather confused: the second section of this chapter will thereby seek to clarify the exact content of Euxenippus' dream, its interpretation, and the relation of Polyeuctus' proposed decree to this dream. This will then allow the third section of this chapter to examine the roles which the different figures involved play in the process of oracle consultation, and the authority with which these are invested in the decision-making process.

### **3.1 Hyperides' *In Defence of Euxenippus*: sacred land and incubation**

Hyperides' *In Defence of Euxenippus* is a speech delivered by the orator Hyperides himself between 330 and 324 BCE in a trial for impeachment.<sup>369</sup> It tells of an occasion when the Athenians consulted the incubation oracle of the god Amphiaraos in Oropos, in order to ascertain the will of the god concerning an issue of disputed land ownership. After the recent restoration of Oropos to Athenian control in 335 BCE, the territory surrounding the town had been divided up among the ten Athenian tribes (Hyp. 4.16). Questions arose about a particular hill, appointed to the tribes Hippothoönthis and Acamantis, which apparently was regarded by some as land sacred to the god Amphiaraos and thus unlawfully allocated to the two tribes. The Athenian Assembly thus tasked the defendant of Hyperides' speech, Euxenippus Ethelokratous of Lamptrai, together with two other men, to undergo the rite of incubation in the god's temple in order to consult the god himself on the matter (Hyp. 4.14). Upon his return to Athens, Euxenippus reported to the Assembly the dream he had – the content of which is unclear, a point we shall return to. What we do know is that a man called Polyeuctus subsequently proposed a decree requiring the two tribes to return the land to the god and the remaining

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<sup>369</sup> Whitehead (2000), 157 and Cooper (2001), 103 judge an early date within this period most likely.

eight tribes to provide compensation to Hippothoönthis and Acamantis for their loss of land and revenue. Polyeuctus, however, was convicted for proposing an illegal decree after a successful γραφή παρανόμων was brought against him. He did not give up on the issue and subsequently brought a charge of bribery by εισαγγελία (impeachment) against Euxenippus, alleging that he had accepted bribes for his report of the dream.<sup>370</sup> Hyperides' speech defends Euxenippus from this charge. The outcome of the trial is unknown.

Despite the dream being central to the accusation of bribery upon which the impeachment charge rests, the majority of the speech is taken up by two lines of argument not directly related to this central narrative. The first is a procedural one, as Hyperides starts his defence by arguing that the prosecution is abusing the procedure of εισαγγελία and that it is inappropriate for a charge of this type (Hyp. 4.1-9, 27-30).<sup>371</sup> Hyperides discusses and quotes the εισαγγελία law (7-9) to prove the exact types of crimes for which an εισαγγελία charge is and is not suitable – a passage which provides us with our main evidence for the reconstruction of this important law.<sup>372</sup> Hyperides argues that the section of the impeachment law which covers bribes applies not to all Athenians, but only to ῥήτορες, and that it is thus not applicable to Euxenippus, whom he portrays as an ιδιώτης, a private citizen, in no way a public political figure (7-9, 27-30). We will return to the question of how accurate this representation of Euxenippus as ιδιώτης really is. The second key line of argument the speech presents is an argument of relevance, as Hyperides refutes the relevance of additional charges made by the prosecution against the litigant on whose behalf he is pleading (19-26: charge of pro-Macedonian sympathies, 31-37: implicit accusation of having amassed great wealth dishonestly). Only in paragraphs 14-18 does Hyperides discuss the actual indictment for bribery brought against Euxenippus and does he give a narrative of the events which led up to the court case. Only here is any mention made of the religious elements of the case, which are conspicuous: the dispute at the heart of the case concerns the demarcation of land as sacred or non-sacred, the appointment of the god

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<sup>370</sup> For the working of the *eisangelia* procedure, see Hansen (1975), esp. 21-28.

<sup>371</sup> Hyperides makes a very similar argument in his speech *In Defence of Lykophron*: Hyp. 1.8-12.

<sup>372</sup> See MacDowell (1978), 184-186; Hansen (1975), 12-20.



Amphiaraos as legal arbitrator on the matter and the subsequent interpretation of his divine sign. Apart from in this narrative section, Hyperides does not make much mention of these religious matters, nor does he utilise religious argumentation to build up his defence of Euxenippus. The speech contains a few oaths, which are regularly-occurring religious references: Hyperides swears four short, informal oaths to Zeus (νή Δία: 4, 11, 14, 27) and makes reference at the end of the speech to the dikastic oath, as he urges the clerk to remind the audience of judges of the oath they swore (τὸν ὄρκον τὸν ἡλιαστικόν) and he himself asks the audience to deliver a verdict in keeping with this oath of theirs (εὖορκον) (Hyp. 4.40).<sup>373</sup> While the method of conflict resolution in this case includes an order by the *demos* to consult the incubation oracle of a god, and the central dilemma in the case is the subsequent interpretation of a source of religious authority, Hyperides does not appear to emphasise these or any religious elements in his defence address.

While the lack of emphasis on the religious elements of the case is not necessarily unusual, it is also important to note that Hyperides' speech is a *συνήγορία*: a speech delivered by a supporting speaker, or *συνήγορος*.<sup>374</sup> This is established by a reference Hyperides makes in the oration itself to a previous speaker: ὅπερ ὁ πρότερος ἐμοῦ λέγων εἶπεν (...) (Hyp. 4.15). Hyperides would have thus delivered his speech after the defence oration of the main litigant – in this case Euxenippus – and possibly even speeches of other *συνήγοροι* too.<sup>375</sup> As such, Hyperides' oration most likely does not present the entire case of the defence, which explains its relatively light treatment of the actual events at the heart of the narrative and their religious dimension.<sup>376</sup>

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<sup>373</sup> The four oaths sworn to Zeus are all informal oaths: the ones at 4 and 11 are refutations of a claim by the opposing speaker; the oath at 14 introduces a hypothetical statement by the opponent, while that at 27 has an emphatic function. See Chapter Four for the definition and analysis of this oath type.

<sup>374</sup> For a detailed study of *συνήγοροι*, see Rubinstein (2000).

<sup>375</sup> Rubinstein (2000), 17 offers another suggestion, namely that there might have been multiple *συνήγοροι* and that Hyperides was thus not necessarily the second speaker. Whitehead (2000), 203-4 follows this.

<sup>376</sup> Babington (1853), xv, who first identified the speech as Hyperides' in 1853, already argued for its identity as *logos sunegoros*, with more modern editors and commentators following: Colin (1946), 153-154; Whitehead (2000), 160; Cooper (2001), 103; Burt (1954), 464; Engels (1989), 222 all explain the choices of argumentation used by Hyperides accordingly.

Of course, another explanation for the speech's relatively light treatment awarded to the events concerning Amphiaraios and the dream is that this was not the real issue at hand here: Hyperides' lengthy refutation of non-related accusations made by Polyeuctus, along with the unclear and questionable motivation behind the choice of *eisangelia* as procedure might suggest the accusation of bribery with regards to the dream could be a smoke screen for an attack stemming from personal enmity and rivalry.<sup>377</sup> Polyeuctus' motivation for becoming involved in the case by first proposing the decree, then bringing the *eisangelia*, are unknown.<sup>378</sup> Of course he might not have had one, aside from simply believing the interpretation of Euxenippus' dream and the decision made based thereupon were wrong, and that he took it upon himself as concerned citizen to question this. However, evidence shows that ὁ βουλόμενος is often not quite as random or disinterested a volunteer prosecutor as the term implies – upon closer inspection he often appears to be an interested party, rather than a bystander approximating a role of public prosecutor – either colluding with the accused (which might explain the negligibly small and symbolic fine of 25 drachmas which Polyeuctus received), or using the case as a cover for other issues between the plaintiff and the prosecutor.<sup>379</sup> Such options cannot be excluded with certainty, but the fact that Polyeuctus twice brought an action regarding the case of the Oropian dream (first the *graphe paranomon*, then the *eisangelia*), as well as the fact that there is evidence for another similar dispute surrounding land distribution in Oropos in the 330s (Agora 16.84), makes it likely the issue of Euxenippus' dream was more than just a cover-up for another charge, and rather formed part of a complicated and important debate on the allotment and exploitation of land following Athens' reacquisition of the territory of

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<sup>377</sup> As Mitchel (1973), 24 suggests.

<sup>378</sup> Not much is known of Polyeuctus of Kydantidai: see Whitehead (2000), 155 for this identification, over the better-known Polyeuctus of Sphettos.

<sup>379</sup> See Osborne (1985), 1–6 whose case study of collusion in the denunciation of property belonging to a public debtor, by *apographe*, urges caution regarding comparisons between law in ancient Athens and the modern world. The fine of 25 drachmas is unusually small for a *graphe paranomon*, but as Whitehead (2000), 214 notes it is not without precedent concerning punishments received in other types of trials: see e.g. Dem. 23.206; [Dem.] 47.43. Cf. Hansen (1991), 207.

Oropos.<sup>380</sup> As it is, this chapter hopes to demonstrate that in order to understand the speech's treatment of the religious dimensions of this issue of land division, one needs to take into consideration the complexity of Hyperides' attempts to balance the presentation of the power of divine will over human interpretation of this will, with his presentation of the authority of human law and of the judges whom he addresses in the speech.

### **3.2 Euxenippus' dream and Polyeuctus' decree**

After his extensive critique of Polyeuctus' use of the impeachment procedure (1-13), Hyperides finally turns to the details of the charge against the defendant in paragraphs 14 to 18. This is the only narrative account of the circumstances surrounding Euxenippus' dream and as such is crucial for our understanding of the case. Hyperides states that:

the people ordered (ὁ δῆμος προσέταξεν) Euxenippus, as one of three, to lie down in the temple; and he tells us that he fell asleep and saw (ἰδεῖν) a dream (ἐνύπνιον) which he reported to them (14).

Having completed the incubation rite at Amphiaraios' temple in Oropos, Euxenippus reported his dream to the demos. Hyperides does not in his speech recount the content of the dream, nor do we find out what report Euxenippus subsequently made to the Assembly, or what debate this generated. Presumably these details would have already been discussed both by the prosecution and by the first speaker for the defence.<sup>381</sup> However, these missing elements, central as they are to the whole case, make it very difficult to build up a coherent and complete picture of the case: as it is, scholars disagree on the basic details of its main elements. We are not even sure, for example, whether Euxenippus' dream was understood as supporting the claim of the god, or that of the two tribes. It will thus be necessary to attempt to reconstruct an outline of the basic details of the case from this narrative section of the speech, before being

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<sup>380</sup> Papazarkadas (2009); Papazarkadas (2011), 102-106. That the allotment of land in Oropos remained important and debated is shown by a very fragmentary decree *Agora* 16.84 regarding the two tribes of Aigeis and Aiantis and records a settlement on the evaluation and leasing of land in the territory of Oropos, dated to ca. 330 BCE.

<sup>381</sup> As Whitehead (2000), 201 indicates.

able to move on to the analysis of the decision-making process and the different authorities involved, in order to construct a picture of the way this source of religious authority functioned. Hyperides continues his narrative by stating:

If you assumed, Polyeuctus, that this was true and that he reported to the people what he actually saw in his sleep, what is his crime in proclaiming to the Athenians that which the god had commanded him? If on the other hand, as you say now, you thought that he misrepresented the god (καταψεύσασθαι τοῦ θεοῦ) and, out of partiality for certain persons, did not report the truth to the people, rather than propose a decree disputing the dream (οὐ ψήφισμα ἔχρῃν σε πρὸς τὸ ἐνύπνιον γράφειν) you ought to have sent to Delphi, as the previous speaker said, to discover the truth from the god. But instead of doing that, you proposed a decree against two tribes, entirely conceived by yourself, (ψήφισμα δὲ αὐτοτελὲς ἔγραψας κατὰ δυοῖν φυλαῖν), a measure not only most unjust but self-contradictory also (οὐ μόνον ἀδικώτατον, ἀλλὰ καὶ ἐναντίον αὐτὸ ἑαυτῷ). This was why you were convicted for an illegal proposal, not because of Euxenippus (δι' ὅπερ ἥλως παρανόμων, οὐ δι' Εὐξένιππον) (Hyp. 4.14-15).

Polyeuctus proposed a decree, which Hyperides describes as a ψήφισμα πρὸς τὸ ἐνύπνιον. In the following sentence, he also labels it as the decree “against two tribes” (κατὰ δυοῖν φυλαῖν) (15). Hyperides continues by detailing what happened to this decree:

You proposed that these tribes [of Acamantis and Hippothoontis] should restore the mountain to Amphiaraus and the sale price of its produce; on the grounds that the fifty boundary officials (τοὺς ὀριστὰς τοὺς πεντήκοντα) had selected it beforehand and set it apart for the god, and that the two tribes had no right to be holding it. A little later in the same decree you propose that the eight tribes provide compensation and pay it to the two tribes so that they are not disadvantaged. But if the mountain really belonged to the two tribes and you tried to take it from them, surely we are entitled to be angry. Alternatively, if it was held improperly by them and it belonged to the god, why were you proposing that the other tribes should pay them money in exchange? They should then have been content to restore the property of the god without also

paying a fine. These proposals, when examined in court, were considered not correctly proposed, and the jury voted against you. So if you had been acquitted of the charge, Euxenippus here would not have misrepresented the god (οὐκ ἂν κατεψεύσατο οὗτος τοῦ θεοῦ), but because you happened to be convicted, must that mean ruin for him? (Hyp. 4.16-18).

The decree ordered that the mountain be returned to Amphiaraios, that the tribes of Acamantis and Hippothoontis restore to the god “the sale price of its produce” (16), and that the other eight tribes should pay Acamantis and Hippothoontis compensation for their loss of land, “so that they would not be disadvantaged” (17). Knowing the substance of the decree, however, does not immediately aid us in establishing how the will of the god, as described in Euxenippus’ dream, was understood, as the relation between the decree and the dream is rather unclear. It has been much debated by scholars and, as David Whitehead notes in his excellent commentary of the speech, “all hinges on the sense of the preposition *pros* in the phrase (ψήφισμα) πρὸς τὸ ἐνύπνιον”.<sup>382</sup> Some have understood this phrase to mean “in accordance with the dream” and thus argue that Hyperides’ dream reported that the land was sacred and should be assigned to the god. Pierre Sineux subscribes to this line of argument in his recent monograph on Amphiaraios, following Gaston Colin and Churchill Babington.<sup>383</sup> Other scholars, such as John Burt and Mario Marzi, have taken πρὸς τὸ ἐνύπνιον in the hostile sense, as “disputing the dream”, thus implying the dream was supportive of the claim of the two tribes.<sup>384</sup> A third option would be that the dream was unclear and that Euxenippus’ report to the Assembly was inconclusive. In this third scenario, the ambiguity of the dream would allow the tribes to understand it as not contesting their right to the land, and would also allow Polyeuctus to subsequently contest this interpretation by proposing his decree. Whitehead appears to favour

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<sup>382</sup> Whitehead (2000), 201.

<sup>383</sup> Babington (1853), 9; Colin (1946), 144; more recently Sineux (2007), 105.

<sup>384</sup> Burt (1954), 475; Marzi (1977), 178-179; Cooper (2001), 107. Also van Lieshout (1980), 176, though she constructs a completely different narrative of these events, alleging Polyeuctus first proposed his decree, then Euxenippus was ordered to consult the god, and Polyeuctus thereupon disputed the dream by lodging the *eisangelia* charge: Horster (2004), 72 follows this. However, this chronology is illogical and does not accord at all with the narrative as Hyperides describes it. At paragraph 15, for example, he makes explicit that the element “based on the dream” is the ψήφισμα, the decree, which indicates the decree is posterior to the dream.

this option, although he does not completely rule out option one either: he translates the πρὸς τὸ ἐνύπνιον phrase as “based on the dream”, which he suggests allows for either the third or the first options.<sup>385</sup>

However, if one carefully examines the different possibilities of who could argue for what, the first option (that the decree is in accordance with the dream) can be eliminated. If the dream adjudicated in favour of Amphiaraios and Polyeuctus’ proposed decree did so too, then it is after all hard to explain why this decree would have been judged unlawful (15: παρὰ νόμων), while nothing of the kind is said about the dream.<sup>386</sup> Furthermore, Polyeuctus is accusing Euxenippus of “misrepresenting the god and not reporting the truth to the people” (15), which indicates that either Euxenippus’ report or his interpretation of the dream must have differed from Polyeuctus’ own solution, as proposed in the decree. There are three possible outcomes to the question of the land allocation: a) the status quo, which would mean the tribes keep the land and the god gets less than he otherwise would; b) the land is returned to the god and the two tribes are compensated, which means all tribes lose something; or c) the land is returned to the god and there is no compensation, so only the two tribes lose out. Polyeuctus’ decree proposed solution b. Euxenippus then must have advocated either a or c. Considering Polyeuctus is accusing Euxenippus of acting on behalf of “certain people” (τισὶ) who bribed him, it makes more sense for Euxenippus to have proposed solution a. In solution c there is after all no one who wins out – apart from the god and his sanctuary, though they equally do so in Polyeuctus’ solution b too, so bribery makes no sense here. Therefore, it is likely Polyeuctus’ accusation must have implied the bribers are supporting the claim of the two tribes, not that of the god.<sup>387</sup>

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<sup>385</sup> Whitehead (2000), 202. Horster (2004) similarly suggests the dream was ambiguous but claims it was understood as in favour of the two tribes: “Euxenippos berichtete von einem ambiguen Traum, den er gehabt habe, woraufhin die Athener beschlosse, dass die beiden Phylen den Berg behalten sollten, da Amphiaraios seine Ansprüche aufgegeben habe” (72).

<sup>386</sup> One could argue the opposition to the proposal was perhaps concerned with the second clause of compensation, but as Hyperides notes (17) this contradicts the first clause assigning the land to the god, for why should the tribes receive compensation if they had no right to the land? Sineux (2007), 105 adopts this line of argument. However, it is still unlikely the dream came down in favour of the god, given the foregoing discussion.

<sup>387</sup> See also Hyp. 4.39: “For Polyeuctus has impeached Euxenippus for speaking against the best interests of the people of Athens, being in receipt of money and gifts from those acting against the people of Athens.” He goes on to question

Furthermore, Hyperides states that Polyeuctus based his decree proposal on the fact that “fifty boundary officials had selected it [the disputed land] beforehand and set it apart from the god” (16). The fact that Polyeuctus brings in new evidence here to support his claim implies that he is disputing a previously made claim, i.e. the dream, and that the decree and dream are thus in opposition.<sup>388</sup> This allows us to eliminate the first interpretation of (ψηφισμα) πρὸς τὸ ἐνύπνιον, that of the decree being in accordance with the dream. We are left then with options two and three, both of which are plausible: either the dream was definitely in favour of the claim of the two tribes, or it was ambiguous and interpreted as such by these tribes.<sup>389</sup> The latter seems the most likely scenario: there must have been some ambiguity for it to be possible for the dream to generate so much debate and dispute. This raises of course the question of what kind of form oracular incubation dreams took, or were said to take, which is something the next section, concerned with the process of incubation, shall consider.

Scholars investigating the speech have focused on the reason why the Athenians consulted the oracle, by attempting assessments of the nature of the issue at hand. William Harris in his study on dreams emphasises the personal involvement of the god as an explanation for the decision by the Athenian demos to consult the oracle.<sup>390</sup> As the conflict concerns land potentially belonging to the god (or to his sanctuary), it appears to make sense to attempt to obtain the god’s judgement in the matter. Nikolaos Papazarkadas, on the other hand, examines the case in economic terms, focusing on the financial exploitation of the land’s forest wealth, and thereby awards little attention to the religious dimension.<sup>391</sup> Johannes Engels instead provides a political reading of the speech, seeing it primarily as a battle between two major Athenian politicians, with Hyperides on the defence opposite Lykourgos on the side of the prosecution.<sup>392</sup>

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whether these people are men from inside or outside the city but does not attempt to specify their identity any further.

<sup>388</sup> The date of this drawing of boundaries is uncertain: Colin (1946), 143 states this must have happened much earlier, possibly between 377-366; Whitehead (2000), 210 on the contrary argues for a more recent date, in the mid-330s.

<sup>389</sup> On the possibility of a divine sign being interpreted as adjudicating against the god’s direct interest, see Horster (2004), 72.

<sup>390</sup> Harris (2009), 157.

<sup>391</sup> Papazarkadas (2011), 44-45, 102-106.

<sup>392</sup> Engels (1989), 222-238.

He goes so far as to suggest that Lykourgos encouraged Polyeuctus to bring the impeachment charge, though there is no evidence for this.<sup>393</sup> Engels pays little attention to the actual charge of the trial, i.e. bribery related to the dream, as he argues that other economic and political motives were the main drivers behind the trial.<sup>394</sup> While Engels may very well be overstating the role of the two politicians within the trial itself, the significance of the political climate is demonstrated by epigraphic evidence, which points to considerable attention awarded by Athens to Oropos in the 330s and 320s BCE.

At the time of Euxenippus' case, Oropos had only recently been restored to Athens - probably by Alexander in 335 BCE.<sup>395</sup> Control of Oropos, as a territory on the border between Boeotia and Attica, was repeatedly disputed in the fifth and fourth centuries: it is thought to have first been settled by Eretria in Euboea, before swinging between Theban and Athenian control.<sup>396</sup> The immediate political context of the reacquisition of Oropos by the Athenians in the 330s, however, is important and relevant, as it helps put this interest in Oropos, its land and its god, in context. A decree (I. *Orop.* 297 = IG II<sup>3</sup> 1 348) passed in 332/1 BCE proposing honours for Phanodemos of Thymaitadai tells us that he was involved with the recent reorganisation of a festival in honour of Amphiaraos, the Great Amphiareia – these were first held in 329/8 BCE, and modelled by the Athenians on the Great Panathenaea.<sup>397</sup> The orator Lykourgos is also mentioned in connection with this festival.<sup>398</sup> Around this time a new fountain and drainage system were also installed at the shrine.<sup>399</sup> At the same time as Phanodemos received honours,

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<sup>393</sup> Engels (1989), 228.

<sup>394</sup> Engels (1989), 231-238.

<sup>395</sup> Traditionally the restoration had been attributed to Philip II in 338 (on basis of Paus. 1.34.1 and [Dem.] 9). Recently however Knoepfler's assignment of this restoration to Alexander in 335 has become accepted: see Knoepfler (2001), 367-389.

<sup>396</sup> The Athenians used Oropos as a naval base during the Persian Wars (Hdt. 6.100-101) and remained in Athenian hands until 411 BCE (Thuc. 2.23.3). Thebes then regained control but by 371 Athens had recovered it again, only to lose the territory again in 366: see Cosmopoulos (2001), 14-16 for a brief overview of the territory's history.

<sup>397</sup> The festival was only held twice, 329/8 and 325/4 BCE, before the Athenian occupation of Oropos ended with the city's defeat to the Macedonians in 322: see Papazarkadas (2011), 48-50 for an account of Oropos in the Hellenistic and Roman periods.

<sup>398</sup> As one of a ten-man commission of supervisors of the festival: see I. *Orop.* 298.

<sup>399</sup> I *Orop.* 292, 295 concerns the fountain; I *Orop.* 347-60 are the dedications. See further Papazarkadas (2011), 44.



a decree was also passed – proposed by the same Phanodemos – proposing honours for the god Amphiaraos himself (I. *Orop.* 296 = IG II<sup>3</sup> 1 349). It proposes to: “since the god takes good care of those Athenians and others who come to the sanctuary, for the health and preservation (ἐφ’ ὑγείᾳ καὶ σωτηρίᾳ) of all those in the country, to crown Amphiaraos with a gold crown of 1,000 drachmas” (l.10-17). This decree is unique, as it is the only occasion we have of the Athenian assembly honouring and crowning a god (rather than a mortal).<sup>400</sup> This is a completely unparalleled practice, and can be taken as an indication of the importance awarded by Athens in the 330s to its recently re-acquired territory at Oropos.

The Athenian interest in Oropos visible in Hyperides’ speech fits in with this too, and in this case can thus be understood as part of Athens’ political efforts to consolidate its appropriation of Oropos through the renowned oracular god and his sanctuary.<sup>401</sup> However, this does not mean that the attention awarded to the cult, and the decision to consult the oracle in this case, should be understood solely in political or economic terms. The above readings are right to emphasise the exceptionality of the case, and one can probably say that political, economic and religious considerations all had a role to play in the Athenians’ choice of strategy for this decision-making process. This case probably formed part of a protracted debate on the allotment and exploitation of land following Athens’ reacquisition of the territory of Oropos, as the evidence for another similar dispute surrounding land distribution in Oropos in the 330s (*Agora* 16.84) indicates too. But in focusing on explaining the *reason* for the consultation, the above readings overlook the intricacies of the decision-making process itself, the mechanisms and strategies involved in trying to resolve this dispute of land allocation, and what this can tell us about the *function* of dreams and divination in public decision-making.

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<sup>400</sup> See Scafuro (2009), 59-86, who stresses the similarities of this crowning to the honours Athens awarded to foreigners, arguing the crowning is both symbolic and political (77).

<sup>401</sup> So Papazarkadas (2011), 44; Humphreys (2004), 95-96.

### 3.3 Transmitters, interpreters, authorities: reconstructing the stages of oracular incubation

The previous section cleared up a number of questions about the narrative of events as Hyperides tells it. Having established that Euxenippus' dream, or in any case its interpretation upon presentation of his report to the Assembly, likely supported the claim of the tribes and declared the land in question to be non-sacred, and that Polyeuctus' decree challenged this claim, it is now possible to examine the roles which these different entities and figures play in the process of oracle consultation, and the authority with which different elements are invested in the decision-making process regarding the ownership of the Oropian mountain. To do so, this next section will retrace and analyse the different steps of the oracular consultation and its aftermath: starting with the decision to consult the oracle and in particular the choice and identity of the incubants, it will then move on to the incubation rite at Oropos itself; to the type of dream experienced; before finally examining the aftermath, as expressed through the discussion of the Assembly, Polyeuctus' proposed decree and his subsequent prosecution of Euxenippus. This analysis aims to provide an investigation into the different players invested with authority in this decision-making process: the god, the demos, and various individuals, as well as the challenges made to different holders of authority throughout the whole process.

#### *Who dreams for the demos?*

Hyperides says the δῆμος made the decision to send incubants to Amphiaraos – he does not specify how exactly, but most probably through a decree of the Assembly.<sup>402</sup> In this conflict of land allocation, it is the *demos* who decides on the resolution strategy to use, and they choose

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<sup>402</sup> Similar to how the Assembly decided to send an embassy or messengers to another state. See, for example, IG II<sup>2</sup> 31, an Athenian decree from 386/5 concerning Hebryzelmis, king of Odryssa, which stipulates three men shall be elected to take news to Hebryzelmis concerning the request of the envoys he himself sent. See also, for example, IG II<sup>2</sup> 43; IG I<sup>2</sup> 57; and for descriptions by the orators of the selection of embassies in the Assembly, see also Aeschin. 2.15; 2.17; Andoc. 2.35; Dem. 18.178.

to consult the oracle. The god, Amphiaraios, is seen as the ultimate authority, the oracle consultation a technique to discover his will. A first point to consider is the Assembly's choice of envoys sent to Oropos to undergo the incubation process on the city's behalf. Hyperides states that: "the people ordered (ὁ δῆμος προσέταξεν) Euxenippus, as one of three, to lie down in the temple (Εὐξενίπῳ τρίτῳ αὐτῷ ἐγκατακλιθῆναι εἰς τὸ ἱερόν); and he tells us that he fell asleep and saw (ἰδεῖν) a dream (ἐνύπνιον) which he reported to them" (Hyp. 4.14).<sup>403</sup> Euxenippus' two companions are not named, or even mentioned again, in the rest of the speech. Does this differentiation between the named Euxenippus and his anonymous companions reflect a differentiation in their status or the manner in which they were chosen as members of the incubation party, or is it simply a consequence of the fact that the two unidentified men are irrelevant to the impeachment case? Whitehead discusses the construction of Εὐξενίπῳ τρίτῳ αὐτῷ in his commentary and builds on Dover's study of the usage and meaning of the idiom 'αὐτός + ordinal numeral' to argue that "rather than implying that the other two members of the trio were formally subordinate to Euxenippus, it indicates that he is the only one whom the user of the phrase wished or needed to mention by name."<sup>404</sup> Whitehead thus opts for the latter of the two options, suggesting that Euxenippus was the only one of the three to receive the gods' message in a dream, and thus his companions are unnamed simply because they are irrelevant to Hyperides' argument.

However, looking at parallel evidence for the selection of ambassadors to consult oracles questions this supposed parity and equality between the three incubants. One such potentially useful parallel may be found in the decree concerning Chalkis (IG I<sup>3</sup> 40) of 446/5 BCE. This discusses the terms of Athens' settlement with Chalkis after its revolt, and states as one of its demands that "the sacrifices required by the oracles (τὰ δὲ ἱερὰ τὰ ἐκ τῶν χρησμῶν) concerning Euboea are to be carried out as soon as possible by Hierokles and three members to be elected

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<sup>403</sup> The same verb προστάσσω is used here of the Athenians tasking Euxenippus with consulting the god, as well as of the god tasking Euxenippus with his message: ἃ ὁ θεὸς αὐτῷ προσέταττε ταῦτ' ἐξαγγείλας πρὸς Ἀθηναίους (14). See Whitehead (2000), 200.

<sup>404</sup> Whitehead (2000), 200, who lists Dem. 18.16; Aeschin. 2.178; Isae. 7.38 and Din. 8 frg.2 as comparable passages in Attic oratory. For a list of the use of the idiom in other sources, see Dover (1960), 70-71.

from the *Boule* (μετὰ ἱεροκλέος τρεῖς ἄνδρας, ἡὸς ἂν ἔλεται ἡε βολὲ σφῶν αὐτῶν)” (64-9).<sup>405</sup> This Hierokles is taken to be the same man who as *chresmologos* makes an appearance in Aristophanes’ *Peace*.<sup>406</sup> The Chalkis decree thus appears to appoint a named religious expert, along with three others who are unnamed and selected (presumably by lot), to carry out the sacrifices required by an oracle. In a similar vein, Hyperides’ naming of only Euxenippus could potentially be a reflection of the way in which the decree of the *ekklesia*, which would have ordered the consultation of Amphiaraos, had appointed members for the incubation party, suggesting Euxenippus was chosen by name, and the other two were elected by lot. This then might suggest that Euxenippus was considered an ‘expert’, in a comparable vein to the *chresmologos* in the Chalkis decree.<sup>407</sup> Of course, we also know of instances where it is clearly stated that all the envoys sent to an oracle were chosen by lot in the same way, without anyone singled out as expert: the decree concerning the Sacred Orgas is such an example: the people chosen to deliver the question to the oracle are “three men, one from the council and two from all Athenians” (IG II<sup>3</sup> 1 292, l. 43-44). However, the process used for this oracle consultation is sufficiently different from Euxenippus’ case and plainly does not even provide any opportunities at all for a potential need of expert knowledge to manifest itself.<sup>408</sup> Again, the paucity of evidence recording formal consultations of oracles by Athens means it is hard to draw certainties from comparisons, but it raises the possibility that Euxenippus was chosen specifically for this assignment.

This possibility may be corroborated by the little which can be gleaned about Euxenippus from Hyperides’ speech, especially as the orator’s portrayal of his defendant should not be taken at face value. Not much is known about Euxenippus (Ethelokratous of Lamptrai), save that he was a wealthy Athenian citizen who had acted as trierarch before 334/3 BC (IG II<sup>2</sup> 1623), and was

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<sup>405</sup> See Meiggs and Lewis (1988), 138-144 for discussion.

<sup>406</sup> On Hierokles and *chresmologoi* more generally, see Chapter Two.

<sup>407</sup> It is of course not possible to extrapolate any certainties regarding the relation between Hyperides’ wording here and the exact wording of the decree which would have ratified the oracle consultation.

<sup>408</sup> See Bowden (2005), 88-95 for discussion of the procedure using two sealed vases, which resulted in any interpretation of and reaction to the oracular answer taking place in front of the *ekklesia* in Athens, rather than on the envoys’ expedition; see also Rhodes and Osborne (2003), 272-281.

elderly (Hyp. Eux. 13) by the time of his impeachment by Polyeuctus. Hyperides presents his defendant as much as possible as an ordinary citizen, an *idiotes* (13, 30), which is possibly misleading. This depiction after all forms part of Hyperides' discussion of the *idiotes/rhetores* distinction made in the *eisangelia* law, and his objection to the prosecution's use of the impeachment procedure, as discussed above. It has long been recognised that *rhetor* is an imprecise term: while legally it referred to anyone who had ever addressed the *ekklesia* – as Euxenippus had done at least once, in reporting his dream to the people – it is often used in a more precise sense to denote someone who played an active role in politics, and it is in this latter sense that Hyperides talks about *rhetores* (8, 9, 27).<sup>409</sup> One should evidently not put too much store on Hyperides' portrayal of Euxenippus as *idiotes*, considering its rhetorical value in the speech's argumentation, and thus it does not disprove the idea that Euxenippus might have been a more prominent member of the community, or a 'religious expert' of some sort.<sup>410</sup>

Furthermore, another story mentioned in the defence speech supports this idea: Hyperides tells us that "Euxenippus allowed Olympias (ἑάσας Ὀλυμπιάδα) to dedicate a cup to the statue of Health (εἰς τὸ ἄγαλμα τῆς Ὑγιείας)" (19) as part of the refutation of accusations of pro-Macedonian sentiments with which the prosecution accuses Euxenippus.<sup>411</sup> A statue to Hygieia is known to have been set up on the Acropolis in the late fifth century (IG I<sup>3</sup> 506) and by Pausanias' time there are two: "Health, whom legend calls daughter of Asclepius, and (...) Athena, also surnamed Health" (Paus. 1.23.4).<sup>412</sup> The cult of Hygieia in Athens was connected primarily to Athena Hygieia before the introduction to the city of Asklepios in 420 BCE, after which Hygieia became more commonly presented in association with this new healer god, as his companion.<sup>413</sup> This story has led some scholars to suggest that Euxenippus held a priesthood

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<sup>409</sup> As Hansen (1989), 17 observes, "the two different uses of *rhetor* in Athens illustrate (...) a gap between the constitution and how it works".

<sup>410</sup> Contra Babington (1853), xv.

<sup>411</sup> Some have argued the statue of Health to which Olympias dedicated a cup was not the one on the Acropolis, but stood in the Amphiareion in Oropos (Paus. 1.34.3 records that Hygieia had a place on the sanctuary's altar): Stafford (2000), 132; Mitchel (1970), 24. Yet this contradicts Hyperides' explicit placement of the shrine which Olympias honoured as in Athens (Hyp. 4.26).

<sup>412</sup> According to Plutarch, Perikles dedicated it (Plut. *Life of Perikles* 13 7.8).

<sup>413</sup> On the history of the cult, see Levente (2003), 39–46; Stafford (2005).

at Athens.<sup>414</sup> Others have suggested rather that Euxenippus was a priest of Hygieia at the sanctuary of Oropos itself: this speculation is based on a dedication found at the Oropian Amphiareion inscribed to Hygieia by Euxenippus (SEG 15.291).<sup>415</sup> However, the dating of this dedication to between 338 and 322 BC makes its relative chronology with regards to the incubation case unknown: it is possible the dedication is a consequence or result of Euxenippus' incubation assignment, and the inscription therefore cannot be used as evidence for a *prior* connection to the Amphiareion. The story regarding Olympias nevertheless tells us something. As Whitehead states, "his 'allowing' (of Olympias to dedicate) makes it necessary to suppose that Euxenippus was acting in some sort of official capacity".<sup>416</sup> We can take this further – while conclusive evidence for the exact nature of Euxenippus' connection to the cult of Hygieia is lacking, it seems not unlikely that Euxenippus was chosen for the oracular consultation because he was somehow considered authoritative in this matter.

### ***Incubation dreams at Oropos***

The status and role of Euxenippus and his fellow envoys is just one aspect of many of the oracle consultation by incubation about which we lack much evidence: another is the nature and form of the dream the incubant is said to have received while in the temple of Amphiaraos. Upon arrival at Oropos, Euxenippus and his two companions would have joined the other incubants hoping for a message or deed from the oracular deity. Amphiaraos, although of Argive origin, was a hero, at times a seer, connected to Thebes, as one of the mythical Seven Against Thebes (Aesch. *Septem* 569-619).<sup>417</sup> He is said to have been swallowed up by the earth during his escape from this battle before subsequently re-emerging as a god (Pindar, *Olympian* 6. 13-14; see also Pindar *Nemean* 9, *Pythian* 8). Early references to the hero indicate his cult and sanctuary was

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<sup>414</sup> Petrakos, (1997), 265; Engels (1989), 229.

<sup>415</sup> Mitchel (1970), 24. The inscription reads "Good health. Euxenippus Ethelokratous dedicated (this)": see Petrakos (1997), 265-267.

<sup>416</sup> Whitehead (2000), 215.

<sup>417</sup> Aeschylus' play presents him as a μάγντις, as also in Eur. *Phoenissae* 173; 1111. On Amphiaraos and his portrayal in myth, see Sineux (2007).

situated in Thebes: incubation took place here, of a divinatory kind (Hdt. 1.46-52; 8.133-134). In his recent study of incubation in the ancient world, Gil Renberg advocates the importance of recognising a distinction between two types of incubation, which he calls ‘therapeutic’ and ‘divinatory’ respectively.<sup>418</sup> The first describes the practice of the sick and injured seeking medical attention at incubation sanctuaries, whereby the god would be expected to heal the incubants in their sleep or provide medical advice to them in their dreams. The majority of our evidence concerns this type of incubation: the main divinity associated with incubation is the healing god Asklepios, who had a number of sanctuaries across the Greek world which provided healing through dreaming, which are also the best-documented incubation sites, both qualitatively and quantitatively.<sup>419</sup> Divinatory incubation, on the other hand, concerns the practice of “seeking dreams about matters other than health concerns, either public or private”: it is an oracle consultation as found at Delphi or Dodona, though differs in terms of the mechanism through which the divine message is transmitted.<sup>420</sup> Renberg’s terminology is helpful to distinguish between two practices which, while sharing many of the same logistics and characteristics, remain distinct in certain important respects: therapeutic incubation appears to develop later – only from the fourth century onwards – and it appears to have had a larger and more popular base of consulters.<sup>421</sup> Amphiaraos’ cult, when situated at Thebes, appears to have provided divinatory incubation.<sup>422</sup> However, the cult somehow changed location or was transferred in the late fifth century, when sources start referring to the

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<sup>418</sup> Renberg (2017), 21-30.

<sup>419</sup> The Asklepeion at Epidauros especially has a substantial collection of reliefs and votives depicting incubation and divine healing epiphanies: see Edelstein and Edelstein (1945). Literary evidence ranges from a comedy scene in Aristophanes’ *Wealth* (633-748) to Aelius Aristides’ *Sacred Tales*, dating to the second century AD, a rich source of information detailing the experience of an incubator at the sanctuary of Asklepios in Pergamon. See Petridou (2015), esp. 186-193.

<sup>420</sup> Renberg (2017), 21.

<sup>421</sup> Divinatory incubation is less well-attested than the therapeutic variety: see Renberg (2017), 310-328. How much the sparser evidence of divinatory incubation is a reflection of reality, or the consequence of survival of sources, cannot be determined with certainty.

<sup>422</sup> Hdt. 1.46-52: Croesus consulted Amphiaraos’ oracular shrine as part of his test of the oracles. Herodotus also reports a consultation in 479 BC by Mys, Mardonius’ agent (8.133-34). According to Hdt. (8.134) Thebans themselves were not allowed to consult the oracle, after Amphiaraos told them to elect him as either their ally or their prophet: they chose the former.

Amphiareion in Oropos, the site which Euxenippus consults a century later.<sup>423</sup> Only once it is based in Oropos is therapeutic incubation attested for Amphiaraos' cult and this becomes the principal type of incubation practiced at Oropos, though as Euxenippus' consultation on behalf of the Athenian *demos* shows, the divinatory type does endure too.

A law code discovered at the site in Oropos, dating to 387-377 BCE, delineates part of how the process of incubation and oracular consultation at the Amphiareion functioned (I. Oropos 277 = LSCG 69).<sup>424</sup> It regulates the rights and duties of the priest and the *νεωκόρος*, the warden of the temple, as well as the behaviour of worshippers undergoing the process of incubation: after paying a fee (*eparche*) and offering sacrifice to the god, the name of the incubant and his city are recorded, and he or she then goes to sleep overnight in the temple, hopefully waking up with a dream message from the god.<sup>425</sup> The rite of incubation was considered a way of facilitating a prophetic dream: by sleeping in the god's temple, and importantly after having offered sacrifices to him, an individual increased their chances of receiving a divine epiphany, of seeing the god and hearing his message. The law code of the Amphiareion indicates it functioned similarly to other incubation sites spread around Greece – most of which were sanctuaries dedicated to Asklepios, the most famous one situated at Epidauros.<sup>426</sup> A number of votive reliefs found at the sanctuary at Oropos present visualisations of the consultant's experience. The reliefs which have been preserved all appear to concern consultations of Amphiaraos in his role as healing god, yet one can assume the basic process is the same for

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<sup>423</sup> How or why the oracle moved to Oropos is unclear: According to Strabo (9.2.10) it was moved on advice of the oracle, though it may have been introduced at Oropos while still existing in Thebes: see Parker (1996), 146-149 and Renberg (2017), 660-676. For the dating of the sanctuary's foundation in Oropos to the late fifth century see Cosmopoulos (2001), 14.

<sup>424</sup> For the dating see Petropoulou (1981), 55-63. Oropos would have been autonomous at this time. Lupu (2003) argues this updates and replaces the earlier sacred law LSCG Suppl. 35.

<sup>425</sup> I. Oropos 277.39-48. On the nature of the sacrifice performed by the incubant, as well as later evidence which describes dietary restrictions in the period preceding incubation, see Sineux (2007), 120-129, 136-148.

<sup>426</sup> On Asklepiian and other incubation sites see both Ehrenheim (2015), who discusses the *modus operandi* of different incubation sanctuaries and provides a catalogue of epigraphic evidence for regulations at these cults; and Renberg (2017), who takes a more analytical approach, focusing on the origin and development of the practice of incubation and setting the Greek examples in a wider context through comparison with Roman, Egyptian and early Christian sources.



divinatory incubation. An example is the relief dedicated by an incubant called Archilos, dating from the first half of the fourth century (NM 3369).<sup>427</sup> The right hand side of the relief shows the incubant asleep, as a snake licks his shoulder in healing, while on the left hand side Archilos is depicted again, here being healed by Amphiaraos himself, depicted as a bearded man.<sup>428</sup> It thus shows clearly the belief that in his sleep, Archilos would have direct contact with (in this case be healed by) the god himself.

What shape or form could Euxenippus' dream have taken? The analysis of Hyperides' narrative and of the πρὸς τὸ ἐνύπνιον phrase above suggested that Euxenippus' report to the Assembly provided only an ambiguous response to the problem which needed solving. Could Euxenippus' dream have been so ambiguous? In the ancient world, dreams were considered to be potential transmissions of divine messages, similar to other divinatory devices: as Xenophon states "the gods know all things, and warn (προσημαίνουσιν) whomsoever they will in sacrifices, in omens, in voices, and in dreams" (Xen. *On the Cavalry Commander* 9.9).<sup>429</sup> Prophetic dreams could appear naturally to someone in their sleep or, when an answer to a specific question was required, be sought out through the practice of incubation. While there is an abundance of evidence for activities of and attitudes to prophetic dreaming in the ancient Greek world, very few sources can be considered parallels to the case of Euxenippus and his two companions. First, there is the evidence for non-incubationary prophetic dreaming, which is largely literary.<sup>430</sup> Here dreams are often ambiguous, cryptic signs which require interpretation: similar to oracles in some ways, though in their usually unsolicited nature they also closely resemble omens. Aside from literary accounts of cryptic dreams, which as mantic narratives often have particular

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<sup>427</sup> NM 3369: on this and other votive reliefs from Oropos, see Petsalis-Diomidis (2006). Cf. Platt (2011), 44-46, on the way the relief offers multiple representations both of the god – in different guises – and of the mortal experience with the divine.

<sup>428</sup> As Renberg (2017), 272 writes, Amphiaraos is usually depicted more like Asklepios.

<sup>429</sup> For discussion, see Mikalson (1983), 39-40. For recent studies on attitudes to dreams and ancient sources concerning dreams, see Harris (2009); Näf (2004). On incubation, see also Dodds (1951), 102-134.

<sup>430</sup> For examples of prophetic dreams, see tragedy (eg. Eur. *IT* 1264-5; Aesch. *Coeph.* 527-535) or comedy (Aristoph. *Wasps* 24,25; Menander *Dyskolos* 402-426), the exaggerated portrayal of a Superstitious Man (δεισιδαίμων) by Theophrastus (*Char.* 16), and the analysis and classification of prophetic dreams by Aristotle in his *On Divination through Sleep*. Xenophon provides numerous historical examples of the attention awarded to dreams (see e.g. *Anab.* 3.1.11-12; 4.3.8-9; 6.1.20-24), this serving as a highly useful source for the belief in prophetic dreams.

functions within a story or myth, works such as Artemidorus' *Oneirocritica* provide proof that interpretation was often considered necessary to make sense of the divine message hidden in one's sleep – so much so that experts, and their handbooks, were employed especially for this purpose. A description of the process of prophetic dreaming in Plato's *Timaeus* also highlights the importance of interpretation, and further also presents dreaming as an inspired method of divination:

When the power of one's intelligence is fettered in sleep one can achieve true and inspired divination, but it belongs to a man when in his right mind to recollect and ponder both the things spoken in dream or waking vision by the divining and inspired nature, and all the visionary forms that were seen, and by means of reasoning to discern about them all wherein they are significant and for whom they portend evil or good in the future, the past, or the present (Plato *Tim.* 71e).

Inspired or direct divination refers to the kind in which there is direct communication between the consulter and the god.<sup>431</sup> By suggesting in the passage above that dreaming is inspired, Plato portrays dreaming as a type of divination in which experts may play a role, not only in the stage of interpretation, but in that of transmission too. Like the statements which come out of the more traditional oracles of Delphi and Dodona, dreams can be “pronouncements by a person believed to serve as a transmitter of the divine truth or will.”<sup>432</sup>

These sources do not deal with incubatory dreaming and therefore do not provide much information regarding the practical realities of dream consultations at incubation sites, such as the form of the question, the dream response and the nature of the resultant debate. While literary accounts of cryptic dreams and the discussion of dream interpretation found in philosophical works and dream handbooks might suggest that dreams were often ambiguous enough to require interpretation, it is not certain that Euxenippus' dream would have looked

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<sup>431</sup> Dreams classed as direct divination: Plato *Tim.* 71e. Also Cicero, *De div.* II, 2. See Ustinova (2013), 26-27, 31-35 for an overview of ancient sources regarding direct and indirect divination, in a convincing defence of the distinction between the two as a division stemming from antiquity.

<sup>432</sup> Ustinova (2013), 28.

anything like the dreams described by Artemidorus. The case of oracles from Delphi, and the discrepancy between the depiction of such oracles in literary sources and those attested in epigraphic evidence, serves as warning against making too many assumptions too quickly about the nature and form of any divine signs, or the experience of receiving these. Evidence which specifically details dreaming through incubation might provide more direct parallels, however the large majority of these are focused on therapeutic, not divinatory, incubation. The famous epigraphic collection of reliefs and votives of Epidauros depict and describe incubation and divine healing epiphanies. Aelius Aristides' *Sacred Tales*, dating to the second century AD, provides us with information regarding the rite of incubation through its account of Aristides' experiences at the sanctuary of Asklepios in Pergamon. However, the degree to which these sources are useful for the understanding of the official oracular consultation of Amphiaraos made by Athens in the fourth century BCE is minimal, not only because of the late dating of these texts, but also because they describe dreams that concern personal matters. They detail the use of incubation in a healing context, and while Amphiaraos and his cult at Oropos were consulted for healing purposes too, Euxenippus' consultation differed: he did not seek healing, but rather knowledge of divine will.

From comparative evidence, it is difficult to know what the result of an official incubation would look like. Nonetheless, epigraphic and literary evidence for the practices of oneiromancy and incubation show that prophetic dreams could be ambiguous and unclear and require interpretation. In his sleep, whilst in an altered state of consciousness, Euxenippus could have received knowledge of the will of the god, and remembered this upon waking in the morning. Hyperides says that "Euxenippus notified the Athenians of the commands which the god gave him" (ἃ ὁ θεὸς αὐτῷ προσέταττε ταῦτ') (14). We might assume therefore that ambiguity would have characterised Euxenippus' dream too, and that it was consequently discussed and 'interpreted' in front of the *ekklesia* upon his return to Athens.

### *The aftermath: contestation*

Having analysed the choice and identity of the incubants, as well as the incubation rite at Oropos itself, it is clear that religious authority in this decision-making process exists on different levels. Just as the *demos* ordered Euxenippus, so too does the god order him to report the message back to the Athenians. Some kind of expertise on the part of the incubant possibly played a part in the process—however, this expertise was in any case not definitive. This is made evident by the aftermath of the dream, by the events that took place after Euxenippus' return to Athens, as this next section shall demonstrate.

Euxenippus, having received the sign of divine will in his sleep, transmitted this to the Assembly in a report, whereupon the sign was in all likelihood discussed. It is possible that it was taken by the tribes of Hippothoönthis and Acamantis as advocating the status quo, as a ruling in favour of their possession of the mountain. Polyeuctus then proposed a decree on the matter: the decree is described by Hyperides not only as πρὸς τὸ ἐνύπνιον, as discussed above, but also as a ψήφισμα αὐτοτελές, the sense of which is similarly unclear and a cause of dispute: Whitehead takes αὐτοτελές as a non-technical description, in the sense of 'acting arbitrarily, with no reference to others'.<sup>433</sup> Another possibility however is that Polyeuctus' decree is αὐτοτελές because he proposed it in response to the report of Euxenippus in the *ekklesia*, without prior planning, and thus without presenting it to the *boule* for inspection first, as would have been the normal procedure.<sup>434</sup>

Interesting is what element of the consultation process exactly this proposed decree questioned: the veracity of Euxenippus' report (i.e. the transmission), the interpretation of the dream, or the dream itself (the sign of divine will)? Again, Hyperides is not very clear on the issue. The most obvious answer would be that Polyeuctus' decree questioned the same stage of

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<sup>433</sup> Whitehead (2000), 205.

<sup>434</sup> As Cooper (2001), 107 suggests, though not without reservations.

the process as he does in his later εἰσαγγελία for bribery: in the impeachment for bribery, as we have seen, he calls into question the veracity of Euxenippus' dream report by accusing him of misrepresenting the god – so questioning the transmission stage of the decision-making process. However, Hyperides seems to imply it was not the case that the two actions by Polyeuctus involved the same elements, and that the decree was instead questioning something different, as he says: “If on the other hand, as you now maintain (ὥσπερ νυνὶ λέγεις), you thought that he misrepresented the god and, out of partiality for certain persons, had made a false report to the people, rather than propose a decree disputing the dream you ought to have sent to Delphi, as the previous speaker said, and inquired the truth from the god” (15). Hyperides here hypothetically assigns as Polyeuctus' motive for proposing the decree the same motive he gives for bringing the εἰσαγγελία, yet the temporal parenthesis ὥσπερ νυνὶ λέγεις implies this is not necessarily the case and suggests he might have said something different ‘then’ from ‘now’.<sup>435</sup>

This is suggested too by the end of the same paragraph, where Hyperides calls Polyeuctus' decree “most unjust and self-contradictory also. This was what caused your conviction for illegal proposals. It was not the fault of Euxenippus” (15). This suggests Euxenippus had nothing to do with the decree and its conviction as unlawful. Furthermore, Hyperides says something telling about the condemnation of Polyeuctus for bringing an illegal proposal: “These proposals, when examined in court, were considered unsatisfactory, and the jury condemned you. So if you had been acquitted in your trial, Euxenippus would not have misrepresented the god: because you happened to be convicted, must ruin fall on him?” (18). This passage has been interpreted in various ways, but must be read, it seems to me, as saying that if Polyeuctus had not been convicted (of bringing an illegal proposal) Euxenippus would not have been accused of misrepresenting the god – therefore if the decree had been passed,

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<sup>435</sup> Whitehead (2000), 202 recognises this undercutting parenthesis but does not elaborate its possible implications.

Euxenippus would not have stood accused.<sup>436</sup> It is only because Polyeuctus was convicted that he then brought the εἰσαγγελία, and with it the charge against Euxenippus.<sup>437</sup> Therefore, the decree could not have been based on an accusation of Euxenippus as misrepresenting the god, and thus must have brought into question something other than the transmission of the dream. Rather, it seems most plausible that the decree questioned the interpretation stage of the oracular consultation, which, if one supposes the dream to be ambiguous, must have taken place after Euxenippus reported the dream to the Assembly.

What Polyeuctus' decree thus questioned is the interpretation of the divine sign, and he does this through the mechanism of a decree proposal, based on the evidence of boundary officials: "(...) your reason being that the fifty boundary officials (τοὺς ὀριστὰς τοὺς πεντήκοντα) had selected it beforehand and set it apart for the god, and that the two tribes had no right to be holding it" (16).<sup>438</sup> The reasons why this previous allotment of the land by boundary officials would have been ignored when the land was more recently divided up amongst the ten tribes is uncertain: possibly it had been forgotten or overridden for some other reason.<sup>439</sup> In any case this argument does not appear to have convinced the judges in the case against Polyeuctus' illegal proposal. Polyeuctus' attempt to question the interpretation of the gods' message by human law and by reference to an earlier land allotment decision made by officials nominated for the task by the polis, is criticised by Hyperides: he argues Polyeuctus should have instead "sent to Delphi, as the previous speaker said, and inquired the truth from the god" (εἰς Δελφοὺς πέμψαντα πυθέσθαι παρὰ τοῦ θεοῦ τὴν ἀλήθειαν) (15). Hyperides makes recourse here to yet another source of authority: Apollo's oracle at Delphi. Hyperides suggests thus that only

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<sup>436</sup> Contra Whitehead (2000), 203. He deems this passage irreconcilable with the interpretation of Polyeuctus' decree as "opposing the dream". But if understood as above, this passage does not have to be incompatible with that interpretation. See also earlier in this chapter (3.1.2).

<sup>437</sup> Whitehead (2000), 203 understands this passage differently, claiming it "does not seem reconcilable" with the supposition that the decree πρὸς τὸ ἐνύπνιον should be taken as adversative to the dream. If that phrase is interpreted as above though, there is no such problem.

<sup>438</sup> Papazarkadas (2011), 47 suggests the delineation of sacred land by fifty *horistai* should be seen as part of the Athenians' reorganisation of the cult upon their reacquisition of Oropos.

<sup>439</sup> When exactly these boundary officials demarcated the land is uncertain: Whitehead (2000), 209-211 proposes a date after 335 BC; Papazarkadas (2011), 45 suggests 335-332 BC.

another god, not a mortal using human law, can provide the truth (ἀλήθεια) regarding Amphiaraos' message. In the sentence just above this, Polyeuctus' *eisangelia* is described as an accusation of "misrepresentation of the god" (καταψεύσασθαι τοῦ θεοῦ) and "not reporting the truth to the people" (15: μὴ τᾷ ἀληθῇ ἀπηγγελέσθαι τῷ δήμῳ). With this juxtaposition of ἀλήθεια Hyperides makes a point about the hypocrisy of Polyeuctus: while Polyeuctus accuses Euxenippus of lying, Polyeuctus himself did not take the right decision to seek the truth either. Evidently there is a strong and obvious rhetorical element to Hyperides' argument here: he is attempting to portray Polyeuctus' actions as conceited (and even impious), thinking his own opinion more valid than the god's. Hyperides attempts to downplay the relevance and power of transient human constructs such as decrees, in comparison with the expressions of divine will found in dreams and oracles.<sup>440</sup>

However, at the same time Hyperides in his speech minimises any discussion of the actual dream at the centre of the case, and instead presents his argumentation within a legal framework by focusing – as we have discussed – in a significant part of the speech on the argument of unsuitability of the εἰσαγγελία procedure. Hyperides has to perform a tricky balance between on the one hand the presentation of human judgement and law as inferior to direct expressions of divine will, as he makes in his rhetorical argument against Polyeuctus' decree, and on the other hand the recognition of the complete authority of *nomos*, human law, and the decision-making power of the judges, which he expresses regularly throughout the speech, addressing as he is an audience of judges. In his defence of his reference to the εἰσαγγελία law, Hyperides asserts the importance of "ensuring that in a democracy the laws will be authoritative (κύριοι)" (Hyp. 4.5). At the end of the speech Hyperides rhetorically highlights the authority of the laws again, as he urges the audience to "dispense with the arguments of us all; let the impeachment and the laws govern your decision and give whatever verdict you consider to be just and in keeping with your oath" (40). These different arguments

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<sup>440</sup> Compare Xen. *Hell.* 7.1.27, who criticises the Thebans and Spartans for not consulting the god about how to bring about peace, instead deliberating about it themselves.

show the complexity of discussing religious authority in the legal and democratic setting of this speech.

### 3.4 Conclusion

In this matter concerning the recognition of land as potentially sacred, authority in the decision-making process thus exists on different levels: Hyperides claims that only a god can give an authoritative judgement, though as the dream Euxenippus received was ambiguous in practice evidently some human agent did have to interpret it – whether the Assembly did so explicitly when faced with Euxenippus’ report, or the tribes implicitly did so in taking the dream as a judgement on their right. Furthermore, even though Hyperides criticises him for this, Polyeuctus could twice present a challenge to part of the decision-making process: first proposing a decree challenging the *demos*’ interpretation of the dream – although his decree is not enacted and becomes discredited, the fact that he proposed it in the first place is interesting – it is evidently *possible* for an individual to personally present a challenge to a dream interpretation and to suggest a contrary one.<sup>441</sup> Secondly, he then brings a court case which challenges Euxenippus’ transmission of the dream. The authority to provide an answer to the question at the heart of this case or an interpretation of a divine sign is thus held by different figures: ostensibly by gods, in reality by the Assembly, most likely strongly based on an ‘expert’ ambassador to the oracle, and even by individuals.

Hyperides’ *In Defence of Euxenippus* can thus be understood as a speech which illustrates the intricacy of the consultation of a god through incubation, as a process made up of a number of different stages in which human fallibility complicates the transmission of divine will from its expression in a dream through to human understanding of this will. This is especially complex for consultations made by a community, rather than an individual, where, as this case

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<sup>441</sup> The negligible fine Polyeuctus received upon conviction nonetheless indicates his decree proposal was not completely unacceptable or particularly unusual. Polyeuctus’ claim the land should belong to the god, rather than mortals, might have made this more easily acceptable.



illustrates, a dichotomy can appear between the singularity of a normal individual who has direct and unmediated contact with the god, and the interpretation of this divine contact in the interests of his whole community.<sup>442</sup> As such, it is maybe not surprising that this case appears to be quite unique. While not unusual per se, the speech's lack of religious argumentation and Hyperides' focus on procedural elements of the case, which are in all likelihood influenced by the speech's nature as a *synegoria*, should also be understood in light of the complexity of balancing a standard presentation of the *nomoi* of the city, as well as the judgement of the *demos*, as authoritative, with Hyperides' attempt to downplay the relevance and power of transient human constructs such as decrees, in comparison with the expressions of divine will found in dreams and oracles. This is of course evidently a rhetorical argument which contradicts the authority invested in the Athenian *demos* in the first place to decide on a manner of action concerning the dispute of the sacredness of the land, secondly to appoint Euxenippus as transmitter of the divine message, and thirdly to play a role in the disputed interpretation of the oracle. The interaction with (and message from) the god is governed by many steps: the choice of individual for the incubation process, his reception of a dream, and the community's acceptance and interpretation (or acceptance of the interpretation) of it. The process of transforming the dream into an understanding of divine will can be challenging, as well as open to challenges.

A final point to consider is how the oracular occasion narrated by Hyperides fits in with the treatment of oracles as evidence in oratory, as discussed in the previous chapter, and what this tells us about the role of oracles in fourth-century Athenian society in general. Scholarship on 'official' divination, the consultation of oracles by officials or city states, in matters concerning public, political or military affairs, has focused mostly on two issues: firstly, the question of form, as attempts are made to reconcile epigraphic evidence of technical, unambiguous oracular consultation – such as described in the famous Sacred Orgas decree – with the ambiguity characteristic of mantic narratives, such as those recounted by Herodotus. Secondly,

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<sup>442</sup> Sineux (2007), 219.

scholars have concentrated on the related question of the function of official consultations: from early-twentieth-century attitudes which derided oracular divination as charlatanism or mere formalities, theories have evidently moved on to focus on the role of divination in its social setting, or as a lens through which to view the mentalities of cultures which make use of such practices.<sup>443</sup> Divination has come to be seen as a regulatory device, used to gain consensus in situations where this is lacking, or – taking it more seriously – as a way of dealing with contingency and risk.<sup>444</sup> The evidence for oracular divination found in oratory which has been collected in the previous two chapters makes a contribution to both these debates: first, regarding the question of form, it allows for a nuancing of the disparities between the pictures painted by different genres of evidence. The varied portrayal of oracles as both law-like maxims and inspired divine messages quoted in speeches by Lykourgos, Aeschines, Dinarchus and Demosthenes already demonstrated that oracles could exist in varied forms in public discourse. So too, the case of Euxenippus cautions against a too-definite separation between public and private oracular practices, showing that even public divination relies on individuals, throughout every stage of consultation and interpretation. Secondly, the oracles presented in law courts in the fourth-century illustrate that the function of oracular divination continues beyond the original moment of consultation. Furthermore, the case of Euxenippus and the Oropian mountain, in particular, cautions against a simplification of the purpose of oracular consultation, and queries the idea that divination is necessarily consensus-building. Here, consulting the oracle does not ‘solve’ the problem, nor does it simplify the decision-making process. Rather, it is only one – if serious – step in the decision-making process, which necessitates also interpretation and debate.

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<sup>443</sup> For an overview of early twentieth-century scholarship, see Johnston (2005), 1-10; Beerden (2013), 9-18.

<sup>444</sup> The first approach: Morgan (1989) sees it as a tool for promoting political and social stability, as a way of dealing with difference and disagreement. Arnush (2005) agrees. He makes the separation between religious and ‘political’ consultations too strong: see especially 101. Bonnechère (2010b) challenges the political reading such an approach can generate, in which oracles are considered simply tools for the Greek states or its leaders which give the appearance of external authority. Nonetheless Bonnechère similarly characterises the function of oracles – in this article, specifically double oracular consultations – as a way for consultants to guarantee their course of action is seen as respectable and enlightened. On the second approach, see Bowden (2005); Eidinow (2007). Also Rüpke (2013), who sees divination as a way of handling uncertainty “which identifies and articulates consent and dissent by using certain social roles to interpret standardised signs and to ritually deal with them. In such a performance a specific appropriation of social roles and religious traditions is indicated” (9).

## Chapter Four: Oaths

This chapter moves the discussion of religion in oratory on from direct sources of religious authority to an element which connects to religious authority in a different way. Dreams and oracles are mechanisms through which the gods are said to communicate their will to humans. Oaths are rather acts of communication between humans, in which the gods play a supporting, if also crucially supportive, role. Oaths are a much more frequent occurrence in Athenian oratory than the divine signs discussed so far; they are, in fact, the most common religious elements of the speeches – both in the forensic and deliberative genres. Speakers in the law courts and Assembly both reference, discuss and quote oaths regularly, as well as also themselves swearing oaths in their speeches. However, despite – or perhaps because of – their ubiquity, the religious significance of these oaths is often considered minimal. Generally, oaths are often seen as devoid of any real significance for the administration of justice, while oaths in oratory, specifically, are taken to be purely rhetorical mechanisms.<sup>445</sup> This common appraisal creates a division between oaths sworn by speakers, and the procedural oaths which are found everywhere in Athenian life (from oaths of office to official judicial oaths and oaths sworn in inter-state agreements) – the former considered less significant than the latter.<sup>446</sup> Through its re-examination of oaths sworn in oratory, this chapter aims to question and nuance such assessments, arguing that oaths carry religious meaning, even if to varying degrees depending on the type of oath sworn. This chapter will commence with an exploration of what an oath is, in order to understand what it actually means to swear an oath. The second half of this chapter then moves on to examine the actual oaths sworn in oratory, which differ distinctively from the oaths merely referenced in speeches: the former are performative speech acts, whereas the latter are only second-hand reports of, or references to, such acts. This chapter will home in on

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<sup>445</sup> E.g. Martin (2009), 259 on one of the rare formal oaths sworn (in Dem. 54): “the oath itself has no procedural consequences, only an emotional effect or one enhancing credibility. So it is nothing but a rhetorical means of influencing the dikasts in a subliminal way.”

<sup>446</sup> One of the main monographs dedicated to oaths in ancient Greece does not even discuss oaths sworn by speakers in oratory, paying attention only to the procedural oaths of the law courts: Plescia (1970).

the actual oaths proclaimed by speakers, examining the two categories of informal and formal oaths.

#### 4.1 What is an oath?

##### *Speech act, ritual action*

An oath is, first and foremost, differentiated from other language by the fact that it is a speech act. Speech acts, as theorised by John Austin, John Searle and others, are defined as cases “in which to say something is to do something; or in which by saying or in saying something we are doing something.”<sup>447</sup> By saying the words ‘I pronounce you husband and wife’, for example, the act of marriage takes place: the man and woman become husband and wife. So too, in pronouncing an oath, the act of speaking itself constitutes an intended action: by pronouncing the oath, one swears. The importance of speech acts in ritual has long been recognised, though for Ancient Greek religion the place of religious speech acts is still not well understood: Sarah Hitch has argued that their low positioning on the scale of importance, compared to ritual action, in the eyes of scholars is an unhappy consequence of the fact that firstly, speech acts are less well-preserved and therefore more elusive, and secondly, written records of religious ritual, such as the so-called sacred laws, are erroneously thought of as describing ritual, rather than recording it.<sup>448</sup> Oaths, however, evidently fit the category of religious speech acts. Besides possessing illocutionary force, an oath namely is further characterised by two elements: an invocation and an implication of immutability.<sup>449</sup> A definition sets this forth clearly: as the Nottingham Oath Project states, an oath is “an utterance whereby the speaker – the swearer – does the following three things”: makes a declaration, “specifies, explicitly or implicitly, a superhuman power or powers as witnesses to the declaration and guarantors of its truth, (...)”

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<sup>447</sup> Austin (1975), 12. See also Austin (1979) and Searle (1969).

<sup>448</sup> Hitch (2011), 133-142.

<sup>449</sup> Austin (1975), esp. 1-11. On a speech utterance as not necessarily the sole element constituting the performance of the act, but accompanied by other actions and dependent on context, see already Austin (1975), 8-9.

and the swearer calls down a conditional curse on him/herself.”<sup>450</sup> Swearing an oath is an act of communication by which one offers one’s own action or statement up for judgement by a superhuman power. Personified as Horkos, the oath god, according to Hesiod, “bring most woe upon human beings on the earth, whenever someone wilfully swears a false oath” (Hesiod, *Theog.* 226-232).<sup>451</sup>

An oath always includes an invocation; a term which can mean a number of things. In epic and lyric poetry, for example, the invocation of the Muses is a request to help the poet in his performance – divine help which may be understood in the form of a gift, as inspiration, or as knowledge.<sup>452</sup> In the context of the oath, however, invocation is usually understood less in terms of beneficence or aid, but rather as the dual actions of witnessing and guaranteeing.<sup>453</sup> It is therefore an ascription of agency to the divine.<sup>454</sup> Immutability is guaranteed by the self-curse which accompanies the oath, even if not always explicitly. It is also this which distinguishes a ὅρκος from a πίστις.<sup>455</sup> The curse specifies what exactly the punishment in case of perjury shall be. General formulae are frequently used, such as for example the sanction of

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<sup>450</sup> Sommerstein and Torrance (2014), 1-2 = Sommerstein and Bayliss (2013), 3-4. See also Sommerstein and Fletcher (2009). The project, hosted at Nottingham University, created besides these extensive and insightful studies also an online database of all references to oaths and swearing in Greek texts from early epic to 322 BCE: see [http://www.nottingham.ac.uk/greatdatabase/brzoaths/public\\_html/database/index.php](http://www.nottingham.ac.uk/greatdatabase/brzoaths/public_html/database/index.php). [Date accessed: 12 May 2016].

<sup>451</sup> Cf. also *Works and Days* 219, 803-4. The effectiveness and potency implied in this image of the oath is not solely a poetic presentation: the sense this Hesiodic Horkos conveys, of an oath relentlessly pursuing its swearer in search of fulfilment, can be seen in Aeschines’ warning to the judges in *Against Ktesiphon*: “the oath which he has sworn judges him, and pursuing him, torments him (δικάζει, συμπακολουθῶν αὐτὸν λυπεῖ). For this oath, I think, is what makes his act a crime (τὸ ἁμάρτημα)” (Aeschin. 3.233).

<sup>452</sup> On the differences between invocation of the muses in epic versus lyric poetry see Graziosi and Haubold (2009), 97-99.

<sup>453</sup> As witnesses: Burkert (1985), 250; Plescia (1970), 2; Polinskaya (2012), 23. As guarantors of truth: Janko (1992), 194; guarantor of bindingness of statement (i.e. guarantor of justice): Burkert (1985), 250; Polinskaya (2012), 27. The role of witness could be understood as implying an all-seeing, all-knowing god, who knows whether the swearer speaks the truth about an action or statement made; or it could be someone who simply bears testimony of the act of swearing. As guarantor, a god can be seen as standing guarantee for the truth of the statement made (Sommerstein (2014d), 1) or as guarantor of the statement being binding, thus emphasising the role of the god as deliverer and executor of justice (Polinskaya (2012), 27; Burkert (1985), 250).

<sup>454</sup> Rüpke (2015), 349 considers this the most basic tenet of religion.

<sup>455</sup> On ὅρκος versus πίστις, see Allan (2007), 114-115. The term πίστις can be used as a general term for bond-creating interactions, of which the oath is the most solemn and serious. The two terms are not identical though, as not every πίστις is an oath: it can also refer to a less formal type of pledge: see e.g. *Soph. Phil.* 811-13.

‘utter destruction’ for oneself or one’s kin (eg. SIG<sup>3</sup> 167: ἐξώλη γίνεσθαι καὶ αὐτὸν καὶ τοὺς ἐκείνου πάντας), though curses can also be more elaborate, and their usage shows that these appear to be considered more serious: Faraone has demonstrated that emphatic, ‘fearful’ oaths with vivid curses are particularly used for individuals in cases where their behaviour poses a potential threat to the wellbeing and health of the whole state.<sup>456</sup>

The statement which is made binding when one swears an oath can be a mark of promise, a guarantee of future action, a consolidation of an agreement, or an utterance of assertion or denial.<sup>457</sup> Considering the context of dispute, it is unsurprising that many of the oaths found in forensic oratory are of the last kind. The dikastic oath, for example, sworn every year by all men who take seat as judges in the courts, asserts that the swearer will judge according to the laws and decrees of the Athenian people.<sup>458</sup> The *exomosia* oath, sworn by witnesses who refuse to confirm a testimony drafted for them by the party who called them as a witness, allows the swearer to deny knowledge of the events of the trial (e.g. Isae. 9.19; Dem. 57.59).<sup>459</sup> As an illocutionary act, an oath is performative in terms of making the act of swearing *happen*. It is the words themselves, when spoken, which transform a statement into a performative.<sup>460</sup> An oath also can be considered performative for the consequences it produces: it is a speech act which is efficacious, explicitly so: it has an effect on the swearer and on the deity invoked,

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<sup>456</sup> Faraone (2015), 152.

<sup>457</sup> Cf. Cole (1996), 230.

<sup>458</sup> Amongst other statements. On the reconstruction of the dikastic oath, see Harris (2013a), 101-137, who discusses the long history of scholarship on the matter. Particularly debated is the meaning of the clause to vote γνώμη τῇ δικαιοτάτῃ (“by their most just understanding”) (e.g. Dem. 23.96): see Mirhady (2007). The oath was sworn at the beginning of each year by all the citizens selected by lot to serve as judges for that year: see Sommerstein (2013a), 70, quoting Isoc. 15.21.

<sup>459</sup> Cf. Sommerstein (2013a), 93.

<sup>460</sup> But contrast this transformatory power of the oath on the *language* it comprises, with the oath’s effect on the *content* of the statement it concerns. See Benveniste (1948), 81-82, who notes “C’est une modalité particulière d’assertion, qui appuie, garantit, démontre, mais ne fonde rien. Individuel ou collectif, le serment n’est que par ce qu’il renforce et solennise: pacte, engagement, déclaration. Il prépare ou termine un acte de parole qui seul possède un contenu signifiant, mais il n’énonce rien par lui-même.” See also Agamben (2010), 4-6 who expands this notion that the oath guarantees its language by arguing the oath also guarantees the truth and efficacy of language itself.

binding them both to a particular course of action.<sup>461</sup> However, as Austin also identified, an oath is also perlocutionary.<sup>462</sup> Because while an oath pronouncement does have an effect in and of the pronouncement itself (it binds the speaker), it is sworn for a particular reason: frequently that is to persuade an audience of *something* (not necessarily that which is in the oath statement). Importantly, the audience is not always merely the invoked deity. The dikastic oath, for example, is an act of communication not only between the judge and the invoked gods, but also addressed to the rest of the citizens – and later, to the litigants facing judges in a trial. Oaths are also acts of communication between two people, or two groups of people: the invoked god is therefore not (always) the addressee, but rather plays the role of a third party. As this chapter shall demonstrate with regard to oratory, by swearing an oath a speaker is also offering a statement up for judgement to his audience.

Despite their essential nature as speech acts, oaths can also be rituals. In ancient Greece, many oaths have a performative aspect to them, as statements are accompanied by sacrifices and expressed in particular locations or following specific stipulations.<sup>463</sup> Many of the oaths of office sworn in Athens were taken at the Agora on a specially-designated stone, referred to as the *lithos*, near the Stoa Basileus. The archons, for example, upon taking up their offices, swore an oath at this *lithos*, on which victims of a sacrifice were cut up. The swearers then moved to the Acropolis to utter the same oath again – thereby pronouncing their binding promises in two religiously significant environments (*Ath. Pol.* 55.4-5).<sup>464</sup> As curses could be made more elaborate, apparently heightening the oath's significance, so too locations and ritual acts are presented as increasing the solemnity and severity of an oath-swearing. Demosthenes, for example, argues that the difference in procedure of oath-swearing in homicide trials, compared to other types of trials, illustrates the solemnity of these oaths:

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<sup>461</sup> The oath's explicit efficaciousness contrasts with that of other types of invocations to deities, such as prayers or calls to witness. While these similarly intend to produce an effect, they carry only a suggestive, rather than binding, force. See on such invocations Polinskaya (2012); cf. also Edwards (2009).

<sup>462</sup> Austin (1975), 98-103.

<sup>463</sup> Burkert (1985), 250 highlights the experiential dimension by stating the oath is "stamped with an irrevocable character and often imprints an unforgettable experience of terror."

<sup>464</sup> On oaths of office, see Bayliss (2013b), 33-46.

everyone who brings accusation of such a crime must swear an oath by invoking destruction upon himself, his family, and his household; secondly, he must not treat this oath as an ordinary oath but as one which no one swears for any other purpose; for he stands over the entrails of a boar, a ram, and a bull, and they must have been slaughtered by the necessary officers and on the prescribed days, so that in respect both of the time and of those who administer it every requirement had been sanctioned (ὅσον ἔσθ' ὅσιον) (Dem. 23.67-68).

Demosthenes' dramatic description of the *diomosia* oath evidently has a rhetorical aim, as he attempts in the speech to emphasise the seriousness and importance of the Areopagus court, which deals with homicide cases, in order to strengthen an attack on his opponent.<sup>465</sup> Nonetheless, Demosthenes' description of *diomosia* corresponds to those found elsewhere (Antiph. 5.11; 6.6) and illustrates how ritual actions, place and time can function as sanctifying elements for the swearing of an oath.<sup>466</sup> Considering the largely textual framework in which this chapter examines oaths, focused as it is on oratory, it is important to remember this ritual dimension – especially when considering the oaths actually sworn by speakers when they deliver their speeches, as the second half of this chapter will do: the lack of sanctifying elements there already suggests that the solemnity and seriousness of oaths should be seen not as uniform across the whole spectre of oaths found in ancient Greece, but as a changing variable.

### *The function of the oath*

Oaths, it appears, are everywhere in ancient Greece. A statement made by Lykourgos in his *Against Leokrates*, that “the power which keeps our democracy together is the oath” (Lyc. 1.79:

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<sup>465</sup> On this speech and its portrayal of the Areopagus court, see Chapter Five.

<sup>466</sup> Other sanctifying features can include the presence of a statue of a god, or unusual ones, such as the throwing of lumps of iron into the sea, as both parties did when Aristides administered oaths to the Ionians in 478/7 BCE (*Ath. Pol.* 23.5).



τὸ συνέχον τὴν δημοκρατίαν ὄρκος ἐστί), is often quoted as shorthand for the importance of the oath in Greek society.<sup>467</sup> Lykourgos further states:

For there are three things of which the state is built up: the archon, the juryman and the private citizen (ὁ ἄρχων, ὁ δικαστής, ὁ ἰδιώτης). Each of these gives this pledge (πίστιν), and rightly so. For human beings have often been deceived. Many criminals evade them, escaping the dangers of the moment, yes, and even remaining unpunished for these crimes for the remainder of their lives. But the gods no one who broke his oath would deceive. No one would escape their vengeance. If the perjured man does not suffer himself, at least his children and all his family are overtaken by dire misfortunes (79).

Alongside the fact, however, that Lykourgos' statement is unusual in linking the oath to democracy as a specific form of government, it also does not evidence the kind of institutionalisation of the oath which scholars at times adduce from it.<sup>468</sup> Walter Burkert, for example, quotes this passage from Lykourgos in his definition of the oath, in which he terms the oath an 'institution'.<sup>469</sup> By doing so, he assigns the oath a complexity and multiplicity which correlates to the numerous different varieties and conceptions found in our ancient sources, but carries with it a slightly misleading connotation of formalisation. Despite its seeming importance, there is relatively little discussion in ancient sources of the oath itself as a concept, aside from the types of literary portrayals of the oath-god Horkos, mentioned earlier. Even the statement by Lykourgos is not as definitional as may seem: it is important to note that the orator is here not talking of the oath as a concept or oaths in general, but rather of one specific

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<sup>467</sup> See, for example, Burkert (1985), 250 and modern, philosophical studies of oaths: e.g. Agamben (2010), 2; Prodi (1992), 2. Importantly, however, Lykourgos is unusual here in linking the oath to democracy as a specific form of government.

<sup>468</sup> Cf. Rubinstein (2007), 269 on the prevalence of curses in states with different forms of government: "There is no evidence to suggest that it was more prevalent as a type of deterrent in legislation passed by narrow oligarchies or aristocracies than in poleis with a broader-based constitutional framework (including democracies)".

<sup>469</sup> Burkert (1985), 250: "In the institution of the oath, religion, morality, and the very organisation of society appear indissolubly linked together."

oath – albeit one taken by a large proportion of the citizen body of Athens, namely the ephebic oath.<sup>470</sup>

The perception of the function of oaths in ancient Greek society has been largely influenced by two questions: their development over time, and their relationship to law. Evidence from the archaic period shows that oaths played an important role in the administration of justice: the Homeric epics and early law codes, such as the one from Gortyn, display evidence for ‘action-deciding oaths’: in certain cases, it seems, the act of swearing an oath could by itself settle a dispute with absolute finality.<sup>471</sup> By the fourth century, as we shall see, oaths are no longer action-deciding. Litigants can offer to swear an oath or challenge their opponent to swear one, but whether they do so or not does not automatically decide the outcome of a trial.

Early twentieth-century scholarship made use of a developmental model to understand this change over time. Kurt Latte’s 1920 study of law and religion in ancient Greece, *Heiliges Recht*, for example, argued oaths lost their importance over time, as the evolution of society, and in particular the development of a “strong central authority”, made up of political and legal institutions and supported by practices of record-keeping and writing, meant that oaths came to be largely replaced by laws by the classical period.<sup>472</sup> He averred that in a primitive society

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<sup>470</sup> Lykourgos is after all not saying the archon, juryman and private citizen all swear their own oaths (such as oath of the archons, dikastic oath and ephebic oath, respectively), as understood for example by Mikalson (1998), 15-17, who argues this passage is a general validation of the oath’s importance. Rather, Lykourgos stresses that all three groups gives *this* pledge (ταύτην πίστιν), and rightly so” (Lyc. 1.79), talking specifically about the ephebic oath. On the ephebic oath, see Kellogg (2008); Rhodes and Osborne (2003), 447-449; Krentz (2007). It is debated whether all eligible Athenian eighteen-year-olds underwent the ephebic training, or whether this was reserved for those of hoplite status (or above). While Lyc. 76 and *Ath. Pol.* 42.2 suggest the former, numerical calculations conducted based on the epigraphic lists of ephebes make this seem unlikely: see Rhodes and Osborne (2003), 453-454. On the ephebic institution and Lykourgos’ connection to its fourth-century reforms, see Pélékidis (1962), 71; Reinmuth (1971), 125; Liddel (2007), 291; Rhodes and Osborne (2003), 440-449. On the oath’s inscription on a fourth-century stele (R088), see Chapter Five.

<sup>471</sup> See Parker (2005b), 72-74. How widespread a reliance on ‘automatic proofs’ such as action-deciding oaths (or forms of witness statements) in archaic sources for legal argumentation actually are, however, has been questioned by Gagarin. He argues that while they certainly existed, their role in legal procedure might be smaller than assumed and the evidence – which comes primarily from Crete and the Gortyn law code – not necessarily representative: Gagarin (2007); Gagarin (2013), 69-70.

<sup>472</sup> Latte (1920), 37-39. On Latte’s work, see also Parker (2005b), 68-81 and Gagarin (1990).

such as archaic Greece, oaths held significant power, as piety and fear of the gods made the early Greeks take these invocations and their curses, with the risk of divine retribution, seriously. Latte thus takes a diachronic perspective, wherein social evolution gives rise to an evolution of genre too: oaths, he says, are only earlier placeholders for laws: by the classical period, “a new view of the nature of the judicial process had prevailed, which could dispense with religious forms” (such as oaths) since “the role of the oath as a judicial piece of evidence had come to an end”.<sup>473</sup> Latte attributed this demise of the oath and its replacement by law to the emergence of strong political and judicial authorities, as well as to a decline in piety.<sup>474</sup> As belief in the gods declined, the practice of oath-swearing, or at least its central place in the application of justice, came to be replaced by ‘rational’ law. This evolutionist approach, which argues oath-swearing was replaced by ‘rational’ law, has of course long been recognized as outdated, yet in a more nuanced form, it makes its way into some more modern scholarship too. Burkert, for example, still highlights a disjunction between oaths and laws in his definition of the oath.<sup>475</sup>

Others, however, have replaced this diachronic approach with a synchronic one, considering how oaths and laws function (with regards to justice) together concurrently. Lene Rubinstein has shown, for example, that there is a strong continuity in the use of curses (*arai*) as a legal deterrent in inscriptions throughout the Classical and Hellenistic periods.<sup>476</sup> They are used to protect the same kind of activities as we find in the Archaic period: curses continue to be used as deterrent for offences against religious ritual, sanctuaries or property, suggesting that public imprecation had not been emptied of its religious significance. They are also added to decrees

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<sup>473</sup> Latte (1920), 39.

<sup>474</sup> See also e.g. Bonner and Smith (1938), 145.

<sup>475</sup> Burkert (1985), 337 defines the oath as significant in classical Greece by juxtaposing it to ancient Greek culture’s lack of “records to act as proof, no legal documents”. He thereby suggests the oath can be understood as a type of proof, in a category similar to legal documents, yet distinct from it. Furthermore, he also accedes to the discourse that the declining importance of the oath is linked and directly proportional to the development of law and political structures. This downplays the religious dimension of the oath, and its character as a guarantee made to the divine. See also Plescia (1970), v, who explicitly announces his “emphasis lies on the legal rather than the religious aspect of the oath”.

<sup>476</sup> Rubinstein (2007).

as entrenchment clauses, deterring anyone from changing the decision made within the decree.<sup>477</sup> Rubinstein shows that rather than understanding this as a trivialisation of the concept of cursing, as if public imprecation has been reduced to a mere formality, it should be seen as adapting curses and the notion of divine punishment they carry to the different political system of the classical and Hellenistic periods. In the case of curses deterring anyone from changing a decree; of course one did have a legal way of preventing any undesired changes of decrees: a *graphe paranomon*, bringing a case against anyone who proposes a motion which might undermine a law or decree. But the deterrent offered by public cursing seems still to have been perceived as necessary, maybe partly because of the unpredictability of a trial and partly because of the uncertainty surrounding the will of individual citizens to initiate prosecutions.”<sup>478</sup>

This re-assessment of the role of curses in public inscriptions is important, as it illustrates that curses (and consequentially also oaths) continue to be considered influential in the sphere of the administration of justice and its punishment.<sup>479</sup> Evidence which shows a dual use, of both curse and human-dispensed punishment as deterrent, should be interpreted, as Robert Parker puts it, as illustrating that “there is no incompatibility, no tension, between threatening the same offender with both punishments and curses”.<sup>480</sup> Oath and law, divine and human justice, work hand in hand.<sup>481</sup> This fits in with the recognition, more broadly, of the continued significance of religious elements in the classical system of law: they are not extra-legal, but are part of the legal system. Beliefs about pollution, for example, continued to influence legislation of homicide even in the fourth century, as Edward Harris has shown.<sup>482</sup> Taking both the religious dimension of the oath seriously and recognising its character as a guarantee made

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<sup>477</sup> Rubinstein (2007), 280-286 collects the epigraphic evidence.

<sup>478</sup> Rubinstein (2007), 276.

<sup>479</sup> Other evidence for the lasting significance of oaths and curses emerges in grave inscriptions which guard against grave theft or damage and often make use of an oath and its divine sanction, alongside a legal sanction. Furthermore, in international dealings between states – in the negotiation of treaties, for example – oaths stand alone, as the only mechanism of sanction available: cf. Mikalson (1983), 34.

<sup>480</sup> Parker (2005a), 77.

<sup>481</sup> See also Chapter Five.

<sup>482</sup> Harris (2015b).

to the divine, these reconsiderations of the meaning and function of oaths in the classical period (with regard to law and justice) in epigraphical evidence help us paint a picture of the context in which oaths in oratory should be read.

### ***Oaths in oratory: introduction***

Oath-swearing frames the occasions in which the orations of the orators were delivered. Before a speaker stood up in a law court to begin a defence or prosecution address, the different parties who participated in the dispute swore an oath regarding their role or duties in the upcoming trial: the judges swore the dikastic oath, while both litigants made a sworn statement at the pre-trial hearing: for most trials this was called the *antomosia*, while in the case of homicide trials it was the *diomosia*.<sup>483</sup> The magistrates presiding over trials, such as the archons or the *thesmothetai*, would have sworn an oath upon accession to their office that covered their role in the law courts too.<sup>484</sup> Deliberative speeches were presented too in a context framed by oath swearing: many of the men addressing the Assembly, as well as those sitting in the audience at such meetings, would have been expected, as citizens of Athens, to swear oaths at different times in their life: whether the ephebic oath, oaths conducted as part of deme business, or oaths related to offices.<sup>485</sup> These judicial, office and citizenship oaths not only encase the occasions in which these speeches were delivered but also pepper the orations themselves, as the above discussion demonstrated: the dikastic oath unsurprisingly leads the way with 111 references in

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<sup>483</sup> On judicial oaths, see Sommerstein (2013a), 57-119.

<sup>484</sup> Witnesses in the fourth century appear not to have customarily sworn their testimonies, potentially a consequence of the practice of having them only confirm in court their deposition which had been drafted in advance, instead of the earlier practice of testifying orally: Sommerstein (2013a), 88. They did however swear an oath in trials before the *ephetai* and the Areopagus Council and also swore an oath, the *exomosia*, whenever they refused to confirm a testimony drafted for them by the party who called them as a witness.

<sup>485</sup> Rhodes and Osborne suggest that in the classical period more than half of the Athenian male citizen population would have been of hoplite status or above, and therefore have sworn the ephebic oath: see Rhodes and Osborne (2003), 454 for further references.

the corpus of Attic oratory, while others frequently mentioned include the litigants' *antomosia* and *diomosia* (13) and witnesses' *exomosia* (13).<sup>486</sup> Oaths of office referred to include for example the oath of the *nomothetai* and the bouleutic oath.<sup>487</sup> These references to procedural and official oaths differ significantly from the oaths actually sworn by speakers in the Assembly and the law courts: not only because the first are only references to speech acts, while the latter are speech acts in themselves; but also because they differ with regard to the level of compulsion. Oaths which form part of the legal procedure of instigating a prosecution or commencing a trial, or oaths sworn as one takes up a civic office, are mandatory elements: it was not possible to fulfil these actions without swearing an oath. By contrast, oaths sworn during speeches are free oaths: the speakers elect to make an oath statement by invoking a god and pronouncing a self-curse. These oaths will form the main material for analysis in the remainder of this chapter.

Scholarship has often focused its attention on the role of oaths within the legal system: a reliance on the institutional, its official procedures and its theories, still proving to be the epistemological framework underpinning such approaches. Illustrative of a preference for theoretical descriptions of law over the evidence of actual practice, works such as Sommerstein's study of 'Oaths in oratory and rhetoric' and Manfred Kraus' article on 'Funktion und Stellenwert des Eides in der antiken Rhetorik' give many more lines to the working of oaths in Aristotle's *Rhetoric* and *Politics* than to oath practices as conveyed in litigants' speeches.<sup>488</sup> Similarly, others prioritise the official and judicial oaths discussed in oratory over the oaths sworn by speakers.<sup>489</sup> This is, as we shall see, a consequence of the vast majority of actual oaths sworn being short 'informal' oaths, the interest and significance of which scholars tend to dismiss quickly.<sup>490</sup> Such an approach contributes to, and corroborates, the particular focus on

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<sup>486</sup> The frequent references to the dikastic oath stand in contrast to the practice found in trials before the Areopagus Council (Lys.3, Lys. 4, Lys. 7, Antiph. 1) or *ephetai* (Lys. 1, Antiph. 6), in which speakers never remind their audience of archons of the oath they have taken.

<sup>487</sup> The oath of the *nomothetai* arises only in Andoc. 1.84. On the bouleutic oath, see Andoc. 1.91; Dem. 24.144-147 and Lys. 31.1-3.

<sup>488</sup> Sommerstein (2014a); Kraus (2009).

<sup>489</sup> Dover (1974), 248-251; Plescia (1970), 40-47.

<sup>490</sup> For example, Martin (2009) does not discuss informal oaths in his work, nor does King (1955).

the rhetorical function of oaths – as we shall see, oaths in oratory are understood primarily as tools of persuasion. Such studies examine how and when oaths are sworn, yet do not really hone in on *why* a speaker might decide to swear an oath.

This next section aims to do so. It leaves aside questions of the exact form and function of the different oaths sworn by the participants in legal trials, such as the *antomosia* and *exomosia* for example, which are discussed in detail in reconstructions of the Athenian legal system.<sup>491</sup> So too it will not focus on the discussion of the use and abuse of oaths in rhetorical treatises.<sup>492</sup> Nor on accusations of perjury, which Martin discusses in depth.<sup>493</sup> Rather, this study focuses on oaths actually *sworn*, in order to examine what it means to swear an oath in a speech. There are two types of oaths sworn by litigants in the courts or speakers in the Assembly: the next section will first examine informal oaths, which are numerous; before moving on to formal oaths, of which oratory only counts a handful. By looking at who swears by which deity, as well as what purpose such invocations have, this chapter will argue that the oath should be recognised as a religiously meaningful element, even if the degree of seriousness of oaths varies depending on the type of oath and its prevalence. It will show that swearing an oath in a speech can be a ritual act which not only has social meaning, in terms of what it conveys regarding reliability, trustworthiness and its role in the speaker's character portrayal, but also has religious meaning, by suggesting a relationship between the swearer and deity and as a mechanism which awards higher authority to a particular statement by bringing in a divine element.

## **4.2 Informal oaths: consequential speech acts**

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<sup>491</sup> See e.g. Sommerstein (2013a), 57-119; Todd (1993), 96-97; Gagarin (2007); Harris (2013a), 101-137.

<sup>492</sup> Arist. Rhet. 1.15.27-32 is limited to discussion of oath-challenges.

<sup>493</sup> See especially Martin (2009), 77-83 on admonitions and the dikastic oath; 171-174 and 225-6 on accusations of perjury; as well as 261-264, arguing perjury accusations are rare and appear to be taken seriously, and that such oath-breaking is portrayed as a real offence against the gods.

The Nottingham Oath Project uses the term ‘informal oath’ to describe the succinct invocations where the “sole linguistic marker is the presence of a phrase consisting of an affirmative or negative particle (...) followed by the name of a god, hero or *Eideshort* in the accusative case” and the oath “occurs in a prose text or in one of the less elevated poetic genres such as satyr-drama, (comedy, elegy or iambus)”.<sup>494</sup> This definition describes the vast majority of oaths sworn in oratory, which are short invocations, made up of a negative or affirmative particle (such as *καὶ μᾶ, νή, οὐ μᾶ, or μᾶ*) and the name of a god in the accusative: *μὰ Δί* (Dem. 19.285), ‘by Zeus’, or ‘by Zeus and the gods’, *νή τὸν Δία καὶ θεούς* (Dem. 32.10), for example. There are 252 of these informal oaths in the corpus of the Attic orators, and such invocations are also regularly found in the comic and tragic dramas performed in the fifth and fourth centuries, speeches in historiographical texts and the Platonic dialogues.<sup>495</sup> Of the 251 informal oaths sworn in oratory, the distribution is uneven: in Andocides’ speeches we find just one example (3.15), Antiphon<sup>496</sup> and Lykourgos have two each, the Lysianic corpus includes four (none are in speeches written by Lysias: Lys. 6.7, 32, 38; 8.18)<sup>497</sup>, Dinarchus has five and Hyperides swears six informal oaths.<sup>498</sup> In Isaeus’ speeches there are 14 occurrences, in Aeschines’ 21 and in Demosthenes’ corpus such an abbreviated oath is sworn 196 times.<sup>499</sup> This inequality in distribution makes visible a change over time: these short oaths are rarely found in the speeches of the early orators Andocides, Lysias and Antiphon. From Isaeus onwards they appear to become more popular.<sup>500</sup>

The definition of the Nottingham Oath Project divorces the 251 short oaths found in oratory from their counterparts in epic and lyric poetry and tragedy, arguing that in those genres *μᾶ*

<sup>494</sup> Sommerstein (2014b), 315.

<sup>495</sup> See ‘The Oath in Archaic and Classical Greece’ Database:

[http://www.nottingham.ac.uk/greatdatabase/brzoaths/public\\_html/database/index.php](http://www.nottingham.ac.uk/greatdatabase/brzoaths/public_html/database/index.php) [Date accessed: 28 July 2016] They count 251 oaths, leaving out Dem. 23.5.

<sup>496</sup> Both of Antiphon’s are in fragmentary works: *Proems and Perorations* (fr. C2) and *On the Revolution*, 3 (fr. B1).

<sup>497</sup> On the pseudo-Lysianic *Against Andocides* and its religious discourse, see Chapter Five.

<sup>498</sup> See Sommerstein (2014b), 315-326 for tables of the number and frequency of occurrences of informal oath by genre and god invoked.

<sup>499</sup> The number for Demosthenes includes six in the speeches generally ascribed to Apollodorus. See Edwards (2009), 418-419 for the list of references (not including Demosthenes). See also Sommerstein (2014b), 316.

<sup>500</sup> Sommerstein (2014b), 318.



or  $\nu\eta$  + god(s) make up more weighty and meaningful utterances.<sup>501</sup> It is generic context, not (only) form, which is therefore taken to determine what an oath utterance such as  $\nu\eta$  τὴν Ἀθηνᾶν might mean. While it is valuable to treat such forms within the context in which they are used, such strict delineation of informal oaths in oratory from oaths in the ‘elevated’ genres of tragedy and epic poetry carries with it a judgement on value.<sup>502</sup> This corresponds to the rather dismissive treatment informal oaths have often received. Martin does not discuss the informal oaths strewn through the speeches, though he does discuss every other type of oath which orators discuss.<sup>503</sup> Informal oaths are, as we shall see, often considered inconsequential: disconnected from their original semantic meaning, these oaths are considered to perform merely a rhetorical function – not to play a role in the discourse, delivery or administration of justice. They are namely not seen to contain any real expectation of either belief in its fulfilment or trust in its function of guaranteeing truth. An exception to this dismissive treatment can be found in Sommerstein’s work on informal oaths.<sup>504</sup> His study is, however, very much focused on comedy. He employs Aristophanic plays, in particular *Clouds*, to test his hypotheses about informal oaths and pays less attention to the short invocations sworn in deliberative and forensic orations: Sommerstein does not include any examples from oratory, for example, in his analysis of whether the invoked deities are context-specific, or whether informal oaths were considered binding.<sup>505</sup> This chapter builds upon Sommerstein’s work by presenting an analysis of oratory’s informal oaths, in order to question their regular dismissal as non-binding, inconsequential words. It focuses on two elements which are interconnected

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<sup>501</sup> On such oaths in tragedy, see Fletcher (2012); in epic, see Kitts (2005).

<sup>502</sup> Different linguistic codes are used in different genres: see Willi (2003), 8 on registers as “situationally defined varieties”, which can influence the meaning of a particular pronouncement. Nonetheless, it is worth examining whether such a strict delineation between short invocations in certain genres from those in others is really justifiable.

<sup>503</sup> He discusses formal oaths, though not all, missing Dem. 23.5. For procedural and official oaths, see, for example, Martin (2009), 42 on the Amphictyonic oath; 53-58 on the oaths sworn on the Second Embassy between Athens and Philip.

<sup>504</sup> Sommerstein (2014b).

<sup>505</sup> Sommerstein (2014b), 331-347.

with each other: the function which these oaths carry out within the speech, and the form they take, which amounts to the choice of deity invoked.<sup>506</sup>

### *The rhetorical function of oaths*

Paying attention to the rhetorical framework, the informal oath can be said to play a role within the argument of the speaker as a literary device and tool of persuasion. Two functions in particular have been recognised: first, the informal oath is often regarded as emphatic, as a tool used to highlight a statement.<sup>507</sup> As swearing an oath in general is an act which brings in a higher authority, it elevates certain statements above all others. The emphatic function of the informal oath is a derivation from this elevation, though it is a much weakened-down variant of it. It is often considered so weakened-down that the informal oath is basically taken as a purely rhetorical interjection. Comparison is often made to the modern offhand use of swearwords and taboo words, such as ‘for God’s sake’ and ‘goddamnit’.<sup>508</sup> In English and in many other modern languages, utterances such as these have become detached from their original meaning: they have become “semantically bleached” interjections, which function primarily as expressions of a mental attitude or state.<sup>509</sup> In their emphaticness, exclamations of ‘by Zeus’ or ‘by the gods’ are considered similar.<sup>510</sup> The second principal function attributed to informal oaths is as a signpost for a hypothetical objection by an opponent, which the speaker then refutes.<sup>511</sup> A passage from Demosthenes’ speech *On the False Embassy* illustrates both of these functions:

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<sup>506</sup> The particles used in invocations do not tell us much: see Sommerstein (2014c), 80–81.

<sup>507</sup> See Sommerstein (2014a), 232; Kraus (2009), 437–439. Commentaries on speeches focus often exclusively on these two rhetorical functions: e.g. Fisher (2001), 185; Kremmydas (2012), 225, 228, 317; MacDowell (2000), 236, 269, 274.

<sup>508</sup> Edwards (2009), 420; Dillon (1995), 135; Sommerstein (2013a), 86.

<sup>509</sup> See Nordgren (2015), 78–79 on oaths as secondary interjections.

<sup>510</sup> Konstantinidou (2014), 37: an oath fulfils “its function as a verbal element that forms, through its manipulation, one of the rhetorical strategies open to litigants in a trial.”

<sup>511</sup> On the development of the oath in this “anticipated objection” argument, which appears from Isaeus onwards, see Sommerstein (2014a), 233–235 and Bers (1997), 139–140, 195.

For, by Zeus, (ὡὶ Δί'), [he said that] the trial of Timarchus will improve the character of our young men. Well then, this trial will improve the integrity of our statesmen, on whom depend the gravest political hazards; and they also have a claim on your consideration. But let me show you that he did not bring Timarchus to ruin because of his anxious care or - by Zeus! (μὰ Δί') - to improve your children's character. Your children, men of Athens, already possess good character; and may no such evil befall the city that the young men need Aphobetus or Aeschines as moral teachers (Dem. 19 285).

Demosthenes' first interjection of Zeus heralds an argument he attributes to his opponent Aeschines: although often translated as indirect speech, with a verb of saying (such as "By Zeus, he said that ..."), the objection is presented as direct speech, signposted *only* by the oath: ὡὶ Δί', οἱ νέοι γὰρ ἡμῖν δι' ἐκεῖνον ἔσσονται τὸν ἀγῶνα βελτίους.<sup>512</sup> The second μὰ Δί' makes vehement Demosthenes' refutation of the idea that Aeschines was in any way motivated in his prosecution of Timarchus by concern for the young people of Athens. The two rhetorical functions which informal oaths can carry out are clearly perceptible in this example and many of the exclamations invoking Zeus or all the gods can be understood in this light.

Focussing almost exclusively on these rhetorical functions has led scholars to conclude informal oaths are rhetorical *topoi* at a complete remove from their original semantic meaning - of binding oneself to the truth of a statement by involving a deity as guarantor or witness.<sup>513</sup> Matthew Dillon, for example, asserts about Aristophanic informal oaths that "so common are these 'oaths' they hardly seem worthy of the name; at most, they might seem to offer no more than insight into colloquial language at the profane level".<sup>514</sup> Sommerstein posits too that these oaths "generally seem to do little more than give emphasis to the statements they

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<sup>512</sup> On the use of oaths as signifiers for direct and indirect speech, see Bers (1997). He asserts a tenth of Demosthenes' oaths involves direct speech: 139. As quotation marks are evidently modern additions, in cases where there are no other framing devices, the informal oath sometimes signals the only indication of a switch in speaker: see e.g. Dem. 8.15-16 or Dem. 4.10, as discussed by Bers (1997), 195-196. However, it is important to keep in mind the oral nature of these speeches, and therefore the role of intonation and inflection in differentiating different personae too.

<sup>513</sup> Willi (2003), 13-14; Edwards (2009), 420; Kraus (2009), 437; Gagarin (2007), 45-47.

<sup>514</sup> Dillon (1995), 135.

accompany”.<sup>515</sup> However, he does elsewhere qualify this statement by being more specific, demonstrating that it is a certain frequently-occurring oath *νή Δία*, which develops into “little more than a sentence-adverbial” as an indication for hypothetical speech.<sup>516</sup> Torrance adds to this that “by Zeus”, in occurrences where it is emphatic in function, is practically synonymous with the particle *μέν*, “on the one hand”.<sup>517</sup>

While it is evident then that some oaths – particularly invocations of Zeus – come to be used as syntactical signifiers and rhetorical tools, should these functions necessarily be considered exclusive, that is to say, do they signify a complete loss of the original function of the oath? Three points suggest that this is not the case. First, it is important to emphasise that informal oaths are still employed as oaths, that is to say, to indicate a statement of which someone (the speaker or, ostensibly, his opponent) argues its truth. The above example from *On the False Embassy* illustrates this. The first ‘by Zeus’ is followed by the declaration (attributed to Aeschines) that the trial of Timarchus benefits the young men of the city. The second oath is followed by the assertion that Aeschines was not motivated by his concern for the young men. Even when used as a signpost for a change in speaker, an informal oath does not accompany just any kind of sentence but rather remains linked to a statement asserting truth or promise – an oath statement. This may seem an obvious point to labour, yet is often ignored in the analysis of informal oaths, as the rhetorical functions take centre stage. However, the role it carries out within the speaker’s argument is only *one* of the dimensions the oath statement possesses, and therefore the oath (its meaning and significance) cannot be reduced to this only. Secondly, comparing informal oaths to the modern usage of swearwords, as discussed above, is not particularly helpful. What one considers swearing in the twenty-first century is not the same as swearing in the fourth century BCE. Modern-day views on what is considered blasphemy, for example, derived from the biblical commandment not to take the name of god in vain (Exodus 20.7), would not always necessarily have been shared by ancient Greeks: while

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<sup>515</sup> Sommerstein (2014c), 81. Cf. Gagarin (2007), 45-46.

<sup>516</sup> Sommerstein (2014a), 237.

<sup>517</sup> Torrance (2014a), 348-349.

unserious use of religious words, especially a god's name, might be considered blasphemous in the sense that the re-appropriation of a deity's name is seen as negative, this does not mean that the act of naming a god necessarily had the same negative or disrespectful connotation in Ancient Greek.<sup>518</sup> The act of naming a deity might similarly be considered a powerful, consequential action, but not necessarily a negative one.<sup>519</sup> What one considers offensive is culturally determined and relative to context, meaning caution is needed when making such comparisons to say something about the *meaning* or value of an exclamation. Thirdly, Sommerstein and Torrance have illustrated that the most commonly sworn informal oath, by Zeus, develops new meanings, in addition to its meaning as an oath. The differentiation this indicates, between an utterance to Zeus and oaths to other gods, suggests that the choice of deity is meaningful and that not all oaths should therefore be painted with the same brush. What then of other oaths sworn which invoke less commonly referenced deities?

### *The choice of deities*

In order to understand the meaning of informal oaths, the choice of deity invoked matters. The evidence for oath-swearing in the ancient Greek world in general shows that this choice can be a meaningful one: over the whole range of different oaths sworn in the Greek world, there are plenty which attest that elements such as the identity of the swearer, the context of the oath, or the occasion of its swearing can influence the choice of which god or goddess to invoke. For example, the *diomosiai* oaths made by litigants in trials before the Council of the Areopagus were sworn by the *σεμναὶ θεαί*, amongst other gods (Din. 1.47).<sup>520</sup> These Revered Goddesses, the

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<sup>518</sup> On the concept of swearing, see Ljung (2001). See especially 1-24 on the modern concept of taboo words.

<sup>519</sup> The power of speaking a god's name perhaps explains Lykourgos' reluctance to add a particular point to his charge against Leokrates at Lyc. 1.137. For another example of the importance attached to the performance of words concerning an oath, see [Dem.]59.74-78, where Apollodorus asks the herald to recite the oath of the *Geraiai*, making clear the audience is only permitted to hear part of the oath.

<sup>520</sup> The oath sworn by the *σεμναὶ θεαί* on the Areopagus by Demosthenes, which Dinarchus accuses him of breaking, suggests anyone who came before the Areopagus during their investigation off the Harpalus affair had to take an oath similar to the ones usually taken in murder trials before this court. See Sommerstein (2013a), 111-115 on Areopagus oaths.

Erinyes, were natural choices as they were, through the mythical trial of Orestes, connected to the founding of the Areopagus court (Aesch. *Eumenides* 443ff). As Dinarchus puts it, they “associated themselves for the future with its reputation for truth (ἀληθεία)” (Din. 1.87).<sup>521</sup> A decree from the deme Ikaria from ca. 440-415 regulating the local Dionysia details that the men chosen as *choregoi* had to swear an oath upon their investiture by placing a hand on the cult statue of Dionysos – an obviously appropriate god to invoke (IG I<sup>3</sup> 254).<sup>522</sup> Certain gods are more regularly sworn by – Zeus for example, both as father of the gods and as Zeus Horkios, while in Athens the triad Zeus, Apollo and Demeter regularly figures in official oaths.<sup>523</sup> Oaths sworn as part of interstate treaties illustrate consciousness in the selection of deities particularly clearly: the frequent references to affirmations of “the customary oaths”, or to each party swearing the oath “most binding in his country”, indicates local variation – in the choice of deities too.<sup>524</sup> Furthermore, in interstate oaths the choice of oath gods is sometimes also clearly a reflection of the power dynamics between the oath-swearing parties: in the fifth-century, Athens commonly required its seditious allies to swear oaths by Athens’ own ‘oath-gods’.<sup>525</sup> In addition, informal oaths found in other genres, particularly in comedy, demonstrate a correlation between invoked deity and the identity of the swearer, more particularly their gender or ethnicity. The variety of characters found in comic plays makes it possible to explore the differentiation in oath-swearing by gender and ethnicity of the swearer, which reveals that certain gods were only invoked by men, others only by women, some by both.<sup>526</sup> Zeus is an example from the last category; Ge, Dionysos or ‘the gods’, on the other hand, are only ever

<sup>521</sup> See Aesch. *Eum.*, with Fletcher (2007).

<sup>522</sup> Cf. Wilson (2000), 79-80 on this decree.

<sup>523</sup> For Zeus, Apollo and Demeter, see e.g. an oath sworn to reinforce a treaty between Athens and Corcyra from 375-371 BC (IG II<sup>2</sup> 97); or the oath sworn by the *euthynos*, the man appointed to scrutinise the appointment of deme officials, in a decree from 359-325 BC (IG II<sup>2</sup> 1183) (see RO 63). These deities are presumably meant by the expression “the three gods”, in oaths such as IG I<sup>3</sup> 244: see Mikalson (1991), 84. In the fourth century Zeus, Poseidon and Demeter also became a common trio to swear by: see Bayliss (2013a), 164.

<sup>524</sup> E.g. IG I<sup>3</sup> 83 (each state swears the oath “most binding in his country”), or IG II<sup>2</sup> 105 (the Athenians will swear “the customary oaths” – *nomima horkia*), with Bayliss (2013a), 162-163.

<sup>525</sup> Bayliss (2013a), 165-166.

<sup>526</sup> There is little evidence for differentiation in oath-swearing practices with regard to ethnicity in oratory, where most speakers are necessarily Athenian. On comedy, see Sommerstein (2014b, 320).

invoked by men, while only women seem to swear to Artemis or Aphrodite, say.<sup>527</sup> That this distribution of oath-god by gender is not mere coincidence is further confirmed by Aristophanes' gender role-playing in the *Thesmophoriazusae* and *Ecclesiazusae*.<sup>528</sup> The choice of deity invoked in an oath can therefore be indicative of a variety of things, from the identity of the swearer and their relationship to the swearer, to the content of the oath statement or the place of the oath's swearing.

Following these examples, one might ask whether in the case of informal oaths in oratory the choice of god to swear by is similarly meaningful. The investigation of this is made significantly easier by the collection of data by the Nottingham Oath Project.<sup>529</sup> Is it possible to see a correlation in the selection of a specific god with the speaker, addressee, occasion or subject-matter of the oath-swearing? If so, this would indicate first, that the choice of god is a conscious one and second, that these oaths with regard to the selection of deities function similarly to more elaborate oaths. This would suggest that the deities invoked in informal oaths count as proper invocations which bring in the gods as witnesses and guarantors.

The informal oaths in oratory most frequently invoke Zeus (176 times), οἱ θεοί (37 occurrences), and combinations of Zeus and other gods (22).<sup>530</sup> Other deities occur much less frequently: Athena is invoked four times, Demeter twice, Dionysus once, Heracles five times, Poseidon once,

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<sup>527</sup> See the analysis of Sommerstein (2014b), 320-330.

<sup>528</sup> So Sommerstein (2014b), 322-323. He contends, for example, that in *Ecclesiazusae* women dress up as men, some successfully, others less so, to comic effect. The chorus of women attempt to make an Assembly speech but keep slipping up by using female indicators to refer to themselves, as well as swearing oaths to the Two Goddesses (Aristoph. *Ecc.* 155) and Aphrodite (189) – oaths only women swear in our sources. On Aristophanic informal oaths in general, see also Dillon (1995). The connection between invoked deity and domain of interest can also be exploited for comic effect. Many oaths in Aristophanes' plays, for example, are ironic precisely because they are sworn to the 'wrong god', if one considers the god's appointed domains of interest: in the *Clouds* for example, it is Poseidon's role as patron god of horses which makes Pheidippides' oath that he loves his father (νή τὸν Ποσειδῶ τουτονὶ τὸν ἴππιον) inappropriate, as his father asked him to stop racing horses (Aristoph. *Clouds* 82-83).

<sup>529</sup> However, Sommerstein (2014b), 331-347 does not include any examples from oratory in his analysis of invoked deities and the context-specificity of informal oaths.

<sup>530</sup> See the data collected by deity in Sommerstein (2014b), 315-320. The combinations can be broken down into 'Zeus and the gods' (12 occurrences), 'Zeus and Apollo' (6), 'Zeus-Apollo-Athena' (2), 'Zeus-Apollo-Demeter' (2) and 'Herakles and all the gods' (1).

and the heroic war dead once. If one examines these less common oaths, one finds instances where the selection of invoked deity is content-specific, and appears linked to the speaker, addressee, occasion or subject-matter.<sup>531</sup> Athena, for example, appears to be invoked in contexts where the speaker directly discusses Athens and its citizens. Lykourgos, arguing that Leokrates' desertion of the city directly contravenes the city's judgement on cowardice and bravery, declares that "for by Athena (νῇ τῇν Ἀθηνᾶν), in the ancient laws and in the principles of those who drew them up in the beginning we have indeed a panegyric on the city" (Lyc. 1.75). As patron goddess of the city, the reasons for the selection of Athena here are evident. The invocation does not only remind the audience of Lykourgos' earlier claim that Leokrates had betrayed "the temple of Zeus Soter and Athena Sotera" (Lyc. 1.17), but also links forward to another appearance of Athena as oath-god, in the ephebic oath which Lykourgos quotes soon after his informal oath (Lyc. 1.77).<sup>532</sup> The other invocations of Athena are similarly found in contexts which concern a threat to Athens or to its citizens as a whole: Demosthenes invokes Athena in his speech *Against Timocrates* as he accuses his opponent of introducing a law which contravenes all of the city's laws (Dem. 24.199). The only other two instances of informal oaths invoking Athena are in material which is less securely Demosthenic: in Demosthenes' second speech *Against Aristogeiton II*, which can be considered spurious, the speaker swears by Athena as he laments that what takes place on the Assembly's *bema* these days is a disgrace to the city (Dem. 26.19).<sup>533</sup> While in one of the *Prooemia* attributed to Demosthenes, Athena is invoked as the speaker tells the Athenians that no other people would listen so complacently to a reminder of their own faults (Dem. *Pr.* 46.3).<sup>534</sup> While not all of these examples suggest as strong a link between the invocation of Athena and the context as Lykourgos' oath does, nonetheless they suggest that the decision to invoke Athena was often a deliberate one. In all cases, it appears

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<sup>531</sup> In his discussion, Sommerstein does not add one single example from oratory: Sommerstein (2014b), 324, n. 57 and 58.

<sup>532</sup> Cf. Rydberg-Cox (2000), 423.

<sup>533</sup> See the discussion of the first speech *Against Aristogeiton* (Dem. 25) in Chapter Five: Laws.

<sup>534</sup> On the *Prooemia*, see MacDowell (2009), 6-7. There are five informal oaths in the collection of *Prooemia*: this is the only one not sworn to 'all the gods' or Zeus.



that speakers made the decision to invoke Athens' patron goddess as they contemplated potential (real or imagined) threats to the city.

Some other uncommon oath-gods can also be linked to the speaker, swearee or context in which they are sworn. In his indictment of Timarchus, Aeschines invokes the only oath to Dionysos found in the orators. He starts off by denouncing Timarchus for being a kept lover before also accusing him of prostitution. Aeschines pretends to be reluctant to discuss such matters openly in the court but eventually declares, "it will be clear that he has not only been a kept lover but – by Dionysos! (μὰ τὸν Διόνυσον) I don't think I can evade the issue all day – has actually prostituted himself" (Aeschin. 1.52). Nick Fisher suggests that Dionysos might be invoked here because "Aeschines is claiming a licence to utter a rude or explicit word as if at a comedy or Dionysiac festival where *parrhesia* is allowed".<sup>535</sup> Another interpretation is that the oath is a hint towards the revelation which follows it – while Dionysos' connection to sex in cult and myth is complicated and diversified, he is presented as a god of "liberation, if only temporary, of both women and men from social controls, including sexual controls".<sup>536</sup> Aeschines' *Against Timarchus* also contains the only oath in oratory sworn to Poseidon (Aeschin. 1.73). Jeffrey Rydberg-Cox has recently suggested this oath to Poseidon could be a subtle invocation of the founding myths of the Areopagus, and thereby a reminder of its divine origins, fitting in with his later claims that the jury should use the standards of the Areopagus Council to judge Timarchus' actions.<sup>537</sup> Aeschines appears to swear unusual oaths with some frequency: of the five oaths sworn to Herakles in the corpus of oratory, two are Aeschinean. In the *Against Ktesiphon*, the orator invokes Herakles in a passage in which he calls Demosthenes

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<sup>535</sup> Fisher (2001), 184.

<sup>536</sup> Jameson (2014 [1993]), 62. Some references connect Dionysos specifically to homosexual sex, such as a poem of Anacreon (PMG 357), though considering the god's variegated portrayal in cult and myth, this is not necessarily indicative of a particular connection.

<sup>537</sup> Rydberg-Cox (2000).

cowardly by implicitly comparing him to the mythical hero Ajax, as Carey also recognises.<sup>538</sup> Selecting another hero as oath-god seems therefore a logical choice.

However, the other three occurrences of a Herakles oath illustrate that not all the choices of uncommon oath-gods can be so easily explained through connection to context. Nothing in the passages in Demosthenes' *Against Aristogeiton* (Dem. 25.51) and Dinarchus' *Against Aristogeiton* (Din. 2.3) suggest why an oath to Herakles, rather than another deity, would be particularly appropriate.<sup>539</sup> The oath to Herakles in the *Against Timarchus* is closely followed in the same sentence by an oath to Zeus and Apollo (Aeschin. 1.88): the hero-god does not appear chosen for a particular reason, other than the emphaticness created by invoking different deities together.<sup>540</sup> The two informal oaths sworn to Demeter similarly do not show an immediately obvious correlation with speaker, context or swearee (Dem. 19.262; Dem. 3.32).

This leaves one last informal oath noteworthy for its unusual choice of who to invoke – and here the oath-god is, strictly speaking, no deity at all. In his speech *On the Crown*, Demosthenes swears an oath by the Athenian ancestors:

But no; you cannot, men of Athens, you cannot have done wrongly when you took on danger for the sake of the freedom and safety of all, I swear by our forefathers who bore the brunt of battle at Marathon (μὰ τοὺς Μαραθῶνι προκινδυνεύσαντας τῶν προγόνων), by those who stood in ranks at Plataea, by those who fought in the sea-battles of Salamis and Artemisium, and by the many other brave men who lie in the public tombs, who were all considered equally worthy of honour by the city who buried them, Aeschines, not only the successful and the victorious. Rightly so, for they all

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<sup>538</sup> Carey (2000), 237. Aeschines says, "it is clear, by Herakles; one thing at least none of you will worry about is that Demosthenes, a man high-spirited and distinguished in war, will, if he fails to win the prize for valour, go home and kill himself" (Aeschin. 3.212).

<sup>539</sup> The fact that two out of the four Herakles oaths are found in speeches presented at the same trial would be interesting, if Dem. 25 were not considered spurious. Nonetheless, the fact the same rare oath appears might suggest the later author noticed the oath as an irregularity. On Dem. 25 see also Chapter Five: Laws.

<sup>540</sup> Earlier in the speech Aeschines also exclaims Herakles' name, though this is not an oath. It is an address to the god in the vocative: ὦ Ἡράκλεις (Aeschin. 1.49) and therefore a type of invocation, like prayers and calls to witness, which carries merely a suggestive, not a binding, force.

performed the duty of good men, and they each met with the fortune which a god (δαίμων) allotted them (Dem. 18.208).

The invocation of ancestors in an oath – even an informal one – is unique. Of all ancestors, the war dead held a special status in classical Greek society, as the funeral orations evidence, yet they are never in the classical period referred to as heroes. However, as Parker points out, “there is no form of cultic honour customarily granted to heroes that the war dead do not receive.”<sup>541</sup> The oath’s invocation of the audience’s ancestors does not come out of the blue; it is part of an argument Demosthenes makes about the inherent value of bravery, even when it does not lead to success. He argues that Athens and its ancestors have always in the past chosen to fight for honour and glory rather than give in to servitude – even if that led to failure. By analogy, he argues that the crown proposed for him – the topic of the court case – amounts to recognition of Athens’ achievements, despite the situation not having turned out as planned or hoped for (Dem. 18.199–208). Considering Demosthenes just emphasized the importance of the deeds and character of the city’s ancestors, it is fitting that he chooses to swear an oath by those ancestors who are most revered of all. The idiosyncrasy of the oath emphasizes the sincerity and solemnity of Demosthenes’ argument, elevated further by two other more regular oaths which he swears in this section too (Dem. 18.199: πρὸς Διὸς καὶ θεῶν; 201: πρὸς Διὸς).

Having examined the informal oaths sworn to singular deities other than Zeus, the oaths which invoke multiple gods and goddesses remain. In his analysis of the five oaths which invoke multiple deities in comedy, Sommerstein demonstrates that all these oaths or their situations have unusual features, suggesting this elevates the binding force of the oath to a more serious level.<sup>542</sup> It is clear that the same can be said for the combination oaths in oratory: Demosthenes’ oath to Herakles and the gods, for example (Dem. 18.294), comes as Demosthenes responds to Aeschines ‘lie’ accusing him of Philippism – in the portrait Demosthenes presents of himself in

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<sup>541</sup> Parker (1996), 136. Cf. ‘The Oath in Archaic and Classical Greece’ Database, Oath ID 3360: [http://www.nottingham.ac.uk/greatdatabase/brzoaths/public\\_html/database/index.php](http://www.nottingham.ac.uk/greatdatabase/brzoaths/public_html/database/index.php). [Date accessed: 10 August 2017].

<sup>542</sup> Sommerstein (2014b), 338–339.

the speech, this is one of the worst accusations imaginable. To underscore the impudence and untrustworthiness of this claim, he swears “by Herakles and all the gods (νῇ τὸν Ἡρακλέα καὶ πάντας θεούς), if you had to eliminate the lies and malicious statements and to examine truthfully ...” (Dem. 18.294). Connected to a statement which concerns the importance of truth and which brands his opponent’s claims as lies, the oath sworn by Demosthenes might be expected to be particularly important.

What can be concluded from this analysis of the informal oaths which litigants and *rhetors* swear to deities other than Zeus or οἱ θεοί, or to a combination of gods? Since such oaths were so rarely sworn, it is likely the audience would have noticed the exceptionality of the statement and considered its meaning. This first of all means that such oaths were used emphatically, to add a greater sense of emotion to the statement the speaker makes, whether he is indignantly disputing a counter-argument or adding solemnity to a promise. The practice of invoking multiple deities similarly appears to be a way of placing extra emphasis on a statement. More than just emphatic though, examples also show that unusual oaths could contribute to or were connected to the argument the speaker was making. The Poseidon oath functions as a reference to the divine origin of the Areopagus court, as a reminder of its importance, in Aeschines’ oration against Timarchus, for example. Whereas the elaborate oath to the war dead which Demosthenes swears in *On the Crown* elevates the significance of his argument about the ancestors’ valour to such an extent that it even suggests hero-status for the bravest of these ancestors. Of course, not all unusual oaths sworn can be explained in such a way, and it is evidently possible that the choices behind some of these lie either elsewhere, for example in local custom, or nowhere at all.<sup>543</sup> Yet that the choice of deity sometimes does connect to the

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<sup>543</sup> An example of variety in oath-swearing potentially linked to geographical variance or local custom can be found in an unusual oath sworn by Socrates. Sommerstein argues the atypical habit of Socrates to swear informal oaths by Hera, as he is depicted to do both by Xenophon and Plato, could potentially be explained as a custom connected to the deme of Alopeke. The oath, which seems particularly connected to expressions of admiration, is sworn too by two others from this deme in the Socratic texts. It could have originated as an Alopekean custom and later spread further, through its association with Socrates: Sommerstein (2014b), 326-330. This could be evidence of an “oath-related dialect feature associated very specifically not just with a single polis, but with a small subpart of one”: Sommerstein (2014b), 330.

argument which the speaker makes indicates that these informal oaths should be seen as real invocations of a particular deity, considerably selected. They are conscious and deliberate ritual acts performed by the speaker to bring in as witness and guarantor a particular god, who is thought to be particularly relevant to or interested in the statement which the speaker proclaims. These utterances are therefore not words empty of meaning but are pronouncements consciously linked to the deities that they name.

The observation that informal oaths are still linked to statements asserting truth or promise, and that they can sometimes be connected to their context or speaker, therefore constituting pronouncements consciously linked to the deities that they name – might seem rather obvious. Its importance, however, lies in the recognition of the religious dimension of these oaths, alongside the widely-recognised rhetorical and linguistic functions which such interjections as informal oaths can play in a speech. This recognition counters the understanding of informal oaths as inconsequential. A perfect demonstration of the way in which this assignment of value – or rather, of an absence of value – affects the way oaths are read can be found in the way in which recent editions of speeches of the Attic orators translate such informal oaths – namely not at all. In his commentary on Demosthenes' *On the False Embassy*, Douglas MacDowell, for example, does not translate any of the informal oaths found in the speech, at 67, 149, 158, 222, 262, 272, 285. There is no mention of the invoked god's name, which is Zeus in most of the above references, but also includes "all the gods and goddesses" (67) and Demeter (262).<sup>544</sup> MacDowell's discussion of such oaths in his commentary is minimal, not acknowledging any religious dimension to the practice of such oath-swearing, and not going beyond a designation of them as either introducing a possible objection by the speaker's opponent, or as performing an emphatic function.<sup>545</sup>

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<sup>544</sup> MacDowell (2000). Many of the older Loeb translations similarly ignore oaths: e.g. Vince and Vince (1953), 347. Of course, others do keep the oath in translation: see, for example, the recent translations of the University of Texas Press' series of *the Oratory of Classical Greece*: on this speech, see Yunis (2005).

<sup>545</sup> For example, MacDowell (2000), 236, 269, 274.

Even when oaths are translated, this is sometimes done without regard for their specificity and variety. Older translations of Greek oratory frequently render informal oaths as ‘by heaven’, with no reference to the specific deity or deities invoked. Stephen Usher, for example, in his edition of Demosthenes’ *On the Crown* translates νῆ τὸν Δία καὶ θεοὺς to ‘by heaven’ (Dem. 18.129), as he does for oaths ‘by Zeus’ (251, 307) and ‘by the gods’ (13, 111) indiscriminately.<sup>546</sup> So too an oath to Zeus and Apollo can be translated as ‘by Heaven’ (Vince’s Loeb translation of Dem. 9.65), while Demeter (Dem. 3.32) and Athena (Dem. 24.199), invoked separately in different speeches, are both transformed into ‘Our Lady’.<sup>547</sup> This translation practice transforms polytheistic oaths to fit in with the modern usage of oaths as swearwords, based on a Judeo-Christian monotheistic tradition. Yet as the above analysis shows, this disregard for specificity and precision in translating oaths and their invoked gods is unwarranted. The alteration or complete erasure of the invoked deity’s name from the translation of informal oaths can therefore be criticised for its lack of specificity, and with it the accompanying loss of information about the swearer’s intention and the oath statement made.

The rhetorical use of informal oaths, which is the primary way in which these utterances have been understood, does say something about the meaning of these utterances, but not necessarily about their value. An informal oath is not added as an interjection to whatever kind of sentence, but rather connected to statements of promise or declarations of truth, as discussed above. Secondly, the choice of invoked deity *can* be, though is not always, content-specific – similar to ‘formal’ or more elaborate oaths. That there is a difference between such informal oaths and those one may consider ‘formal oaths’ (those for which the oath declaration, if not also the conditional curse element, is explicit) is evident.<sup>548</sup> However, it might be more useful to see this difference as one of degree, rather than a difference in kind or value. Andreas

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<sup>546</sup> Usher (1993). The oath to Zeus at 261 does not see translation at all. Vince and Vince (1953), translate some oaths as ‘by heaven’ too. See also their translation of the oath ‘by Herakles and all the gods’ as ‘by heaven and earth’ (Dem. 18.294). Admittedly, unusual oaths do get translated, such as the unique invocation of the Athenian ancestors, including the dead at Marathon and Plataea (208), and an oath to Herakles and all the gods (294).

<sup>547</sup> Vince (1930), 60, 258; Vince (1935), 500.

<sup>548</sup> See 4.3 below.

Willi, in his analysis of religious language in Aristophanes, looks at prayers as well as secondary interjections such as ‘Oh Zeus’ and ‘Lord Herakles’. These he sees as different from prayers, of the utterance of which they are a shortened form, but in degree rather than kind: “they only *imply* a passing request for assistance” compared to the more explicit requests to the gods which prayers constitute.<sup>549</sup> The relationship between informal oaths and other oaths can be described in similar terms, as a difference of degree of intensity, rather than seeing in informal oaths a complete elimination of their original meaning.<sup>550</sup> Formal and informal oaths occupy different places on a sliding scale, which also includes extremely elaborate oaths (such as the oath of office of the *Basileus*, for example, or interstate oaths, such as the League of Corinth oath) – made elaborate by the use of sacralising place and ritual acts such as sacrifice. Informal oaths are shorthand for something. They imply a promise to a god, an assertion of the truth, a strengthening of the statement made.

### **4.3 Formal oaths: vows of intention**

On certain occasions, speakers in the courts swear an oath which is more elaborate than the informal oaths discussed above: these oaths include an explicit oath statement and/or a self-curse. There are four such formal oaths in the corpus of Attic oratory. Three of these are made up of a verb of swearing (such as ὀμνῶμι or ὀμνύω) followed by the name of a god, all found in Demosthenes’ discourses (Dem. 23.5; 32.31; 54.41).<sup>551</sup> The fourth takes the form of an imprecatory oath: the god invoked is not mentioned as only the curse element of the oath is made explicit: this too is an oath sworn by Demosthenes (Dem. 19.172). Despite the evidence being quantitatively small, the content of what exactly is sworn reveals interesting patterns: these oaths all, even if to varying degrees, swear to the truth of statements which are not strictly factual in nature, but concern motivation and intention, the alleged rationale behind the speaker’s actions and words. This section will question the approach which takes the lack

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<sup>549</sup> Willi (2003), 13–14.

<sup>550</sup> Cf. also Sommerstein (2014b), 332–333.

<sup>551</sup> On language of oaths, see Sommerstein (2014c), 76–86.

of quantity, the fact that there are only four formal oaths sworn in the whole corpus of speeches, as a qualitative indication of their significance too. It will argue that the rarity of these oaths should be understood not as a sign of their insignificance, but as evidence for the risky nature of oath-swearing.

#### ***Four formal oaths***

The first oath is pronounced by Euthycles in the speech *Against Aristocrates*, written by Demosthenes (352 BCE).<sup>552</sup> Euthycles brought a *graphe paranomon* against Aristocrates, accusing him of making an illegal proposal with his suggestion to award Charidemus, a mercenary general, special protections enshrined in law, including inviolability. The decree proposed for example that anyone who should kill Charidemus would be liable to seizure and exile from Athenian territories without trial (Dem. 23.35). Euthycles argues that this degree is contrary to Athenian interests. His speech makes significant use of religious argumentation: he contends that the proposed degree would contravene the Draconian laws on homicide and could therefore result in the city incurring pollution by blood-guilt (42-43). Furthermore, Euthycles also claims the decree would allow anyone who harms Charidemus to receive punishment without a trial, which would be ἀνόσιον (76) and endanger the purity of the city. As such, Euthycles argues, the decree contravenes the laws and customs of the Areopagus court. He highlights the court's mythical origins, the atypical nature of the oaths sworn there and the solemnity of the court's customs, to the latter of which he even ascribes divine origin (70), as the next chapter discusses.<sup>553</sup> Early in the speech Euthycles proclaims the following oath:

Know well that I at least would shrink back, I swear by all the gods (ὁμνύω τοὺς θεοὺς ἅπαντας), from laying down this indictment myself, if I had not considered it to be entirely dishonourable to now hold my peace and be silent, when I see people engaged

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<sup>552</sup> On the charge, see Hansen (1974), 33. Papillon (2008) presents a rhetorical analysis of the speech. Martin (2009), 122-127 discusses the speech's religious argumentation.

<sup>553</sup> See the discussion in Chapter Five of this speech's portrayal of law and of the Areopagus court. On oaths in homicide trials, cf. Antiph. 5.11; Dem. 23.69; Dem. 59.10; Antiph. 6.16. On homicide trials' 'winner's oath', see Faraone (2015), 150-153 Cf. also Sommerstein (2013a), 111-115.



in a project to the disadvantage of our city, when previously, as I sailed for the Hellespont in a command of a trireme, I spoke out and denounced certain men, who I thought were doing you wrong (Dem. 23.5).

This oath is not included in the Nottingham Oath Project's database, nor in the lists of free oaths sworn in oratory which Sommerstein and Martin both discuss.<sup>554</sup> Editions of the text present the oath in brackets, but this is not indicative of the words' spuriousness, only of editors' easy dismissal of religious utterances.<sup>555</sup>

Euthycles' oath in the passage above comes early in the speech as the speaker introduces his reasoning for taking Aristocrates to court. The oath invokes 'all the gods', while the statement which Euthycles swears is that "I would shrink back from laying down this indictment myself if I had not considered it to be entirely dishonourable to now hold my peace and be silent" (Dem. 23.5). The oath statement is a declaration of the speaker's motivation for his action. He swears an oath not to make a claim about what he did but about why he did what he did. Building on his self-portrayal as non-politician, Euthycles argues that he would normally share the reluctance of ordinary citizens to get involved in political affairs such as these, but for the fact that his sense of honour would not allow him to ignore the situation, and it is this which explains why he brought an indictment.<sup>556</sup> Euthycles builds much of his whole court case on the contention of intentions (stated versus real) and their consequences: he starts off by telling the audience that in making their verdict they should not only consider the phrasing of Aristocrates' decree, but its consequences (τὰ συμβησόμενα): it is not the legality of the decree which is problematic, but its intention, which Euthycles argues is not what its proposer makes it appear to be. He argues that the decree's intention may seem to simply be a grant of protection to an individual, but it is – deliberately – an attempt to deceive (ἐξηπάτησθε), and

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<sup>554</sup> It is not discussed in Sommerstein and Bayliss (2013) and only mentioned in passing in a list of ὅμνυμι oaths in Sommerstein (2014c), 77. Martin (2009), though examining the religious argumentation of the speech in detail (122-127), overlooks the oath too and recognizes only the two below (Dem. 32.31 and Dem. 54.41) as instances of free formal oaths made in oratory (258).

<sup>555</sup> E.g. Vince (1935).

<sup>556</sup> On the identification of the speaker as Euthycles, not Demosthenes, see Martin (2009), 118-122.

the real consequence of the decree is to rob the city of its safeguard for the Chersonese (23.2-3). The oath sworn by Euthycles here thus comes amidst a crucial argument, indicating its importance. The statement which it makes binding concerns the alleged motive of the speaker - something which is unprovable, or at least is not a simple factual statement. The oath, then, is the avowal of a statement for which other proof may be quite impossible to obtain.

The second formal oath is found in the speech *Against Zenothemis*, written by Demosthenes for his cousin Demon in the 350s or 340s BCE.<sup>557</sup> Demon had become embroiled in a case concerning the loan of money for the purchase of a cargo of grain.<sup>558</sup> The oath is sworn just before the speech breaks off as its ending has not been preserved:

There is yet another way in which they hope to deceive and trick you. They will accuse Demosthenes, and will say that I relied upon his help when I put Zenothemis out of possession of the grain, assuming that this charge will be credited because he is an orator and a well-known personage. Demosthenes, men of Athens, is indeed my relative, I swear to you by all the gods that I speak the truth, (καὶ πάντας ὑμῖν ὅμνυμι τοὺς θεοὺς ἢ μὴν ἐρεῖν τᾷ ἀληθείᾳ), but when I approached him, and entreated him to be present and to aid me in any way he could, he said to me: (...) (Dem. 32.31-32).

Here, the oath statement itself and the oath function are in a way reversed. The oath is a mechanism by which one guarantees the truth of a statement. Usually the sworn statement is a report or promise of a particular action or thought, and it is by swearing this that its truth is implied. Here, the statement which follows the verb of swearing (ὅμνυμι) is a declaration of speaking truthfully. What exactly is true, is only specified after, as the future form of ἐρεῖν indicates: the discussion between Demosthenes and Demon. The oath is not (or not only) an attestation of the factual information that Demosthenes is indeed Demon's kinsman, but also

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<sup>557</sup> Between 353 and 340 BCE: MacDowell (2004), 84. The oath, like the previous one, is not discussed by Sommerstein and Bayliss (2013) or Sommerstein and Torrance (2014).

<sup>558</sup> The speech is a *paragraphe*, a counter-indictment. Zenothemis had brought a prosecution against Demon to make a claim to the disputed grain, after which Demon brought a *paragraphe* against him, contending that prosecution under the law chosen by Zenothemis did not fit the case. On the intricacies of the case itself and the different claimants to the grain, see MacDowell (2004), 84-86; Isager and Hansen (1975), 138-149; Harris (2015c), 15-17.

of the explanation for Demosthenes' involvement in the case. The speech breaks off but Demosthenes must have had Demosthenes here make an argument along the lines that his renown and experience might prejudice his audience or hinder Demon's case.<sup>559</sup> The oath does not concern the main charge at the heart of the case (the speaker's claim to the grain), but a secondary claim (defending him against the allegation of employing a skilled speaker to provide unfair support).<sup>560</sup> The oath is again, then, guaranteeing a statement regarding the speaker's reasoning behind an action.<sup>561</sup>

The third ὀμνύω oath is sworn by Ariston, the speaker of the speech *Against Conon*, written by Demosthenes, similarly in the 350s or 340s BCE. Ariston brings a charge of battery (*aikēia*) against Conon after accusing him of assault.<sup>562</sup> The oath which Ariston swears forms part of a bizarre countermove to an oath he alleges his opponent will make: "People say that he [Conon] will gather his children around him and swear on their heads and will call down certain dreadful, cruel curses (ἄρας τινὰς δεινὰς καὶ χαλεπὰς), so awful that the man who heard them and reported them to us was amazed" (Dem. 54.38).<sup>563</sup> Despite what Ariston says, it is not so surprising that Conon should bring up his sons in this oath, considering they too are accused of being involved in the assault.<sup>564</sup> Nonetheless, Ariston criticizes the audacity of such an excessively strong oath and links it to other examples of his opponent's lack of respect for sacred things, accusing Conon of regularly eating offerings set out for the goddess Hecate. Conon is also said to "swear and perjure himself easier than anything else" (39). Yet after this denunciation of his opponent's oath-swearing, Ariston subsequently goes on to swear an oath himself. This might seem like a strange direction to take immediately after his criticism of

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<sup>559</sup> So MacDowell (2004), 94.

<sup>560</sup> Cf. Martin (2009), 258.

<sup>561</sup> One of the two informal oaths in this speech similarly swears to a statement of intention: Dem. 32.9-10.

<sup>562</sup> Throughout the speech he also often refers to Conon's deeds as acts of *hybris*: e.g. Dem. 54.1, 2, 13, 24.

<sup>563</sup> Ariston characterizes oaths sworn on one's children's heads as unacceptable, yet in Dem. 19.292 such oaths, made in the Assembly at least, are not portrayed as improper, despite the fact it is his opponent who is swearing such an oath. Besides, in his speech *Against Aphobus*, Demosthenes mentions his mother swearing such an oath (Dem. 29.26, 33, 56). See also Andoc. 1.31. Cf. Carey and Reid (1985), 99, contra Martin (2009), 259 (who "has not found any parallels to this oath [Dem. 54.40] in other speeches"). As such, this dimension probably does not make the oath so unacceptable: more likely it is only the unspecified "terrible and cruel" nature of the curses.

<sup>564</sup> Sommerstein (2013a), 86-87.

Conon. Yet Ariston, as we shall see, attempts to portray his own oath-swearing as a necessary evil, sworn not out of choice but necessitated by the urgency of the situation (and by Conon's perjury). Ariston explains that he presented an oath challenge (*proklesis*) to Conon ahead of the trial which was not accepted, and it is this oath which Ariston then repeats and re-swears freely in his speech itself:

This oath [the oath challenge] I was at that time ready to take, and now, to convince you and those who stand gathered about, I swear by all the gods and goddesses (ὁμνύω τοὺς θεοὺς καὶ τὰς θεὰς ἅπαντας καὶ ἀπάσας) that I have in very truth suffered at the hands of Conon this wrong for which I am suing him; that I was beaten by him, and that my lip was cut open so that it had to be sewn up, and that it is because of gross maltreatment that I am prosecuting him. If I swear truly, may many blessings be mine, and may I never again suffer such an outrage; but, if I am forsworn, may I perish utterly, I and all I possess or ever may possess. But I am not forsworn; no, not though Conon should say so till he bursts (Dem. 54.41).

This oath differs from the previous two ὁμνύω oaths examined, in that the content of the oath statement sworn includes factual information, which also concerns the main charge of the trial: the oath is used to guarantee the truth about the identity of the person who caused the speaker's injuries and about the extent of these injuries. Ariston does also swear a claim regarding his intention in prosecuting Conon by adding that "it is for this abuse that I am prosecuting him" (41: καὶ ὑβρισθεὶς τὴν δίκην διώκειν), but this is secondary: the main oath statement concerns the assault, the central issue of the prosecution. This difference can be explained by the fact that this oath is a restatement of the oath-challenge which Ariston says he proposed to his opponent.<sup>565</sup> This is important, as by swearing an oath-challenge Ariston can present his oath as more 'regular' than Conon's dramatic and excessively strong oath and self-curse.<sup>566</sup> That oath-challenges were still taken seriously in fourth-century Athens is evidenced

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<sup>565</sup> What kind of form the oath-challenge took is unclear. On the oath challenge, see Mirhady (1991); Sommerstein (2013a), 101-108.

<sup>566</sup> See also Sommerstein (2013a), 86-87; Konstantinidou (2014), 44-47. Contra Carey and Reid (1985), 103, who state that Ariston's oath is not significantly more *nomimon* than Conon's.

by an episode recounted in another oration by Demosthenes, the first speech *Against Boeotus* (Dem. 39). The speaker here discusses an oath challenge offered by his father Mantias to a woman named Plangon. Mantias had challenged her to swear that he is the father of both her children and, contrary to his expectations, Plangon accepted this challenge and swore the oath. Mantias subsequently had no choice but to recognise the two boys as his own and register them to his phratry, after which they inherited part of his property (Dem. 39.2-4).<sup>567</sup> The consequences of oath-challenges were both recognised and tangible in Athens in the classical period, which also helps explain Ariston's action in the speech *Against Conon* of voluntarily swearing an oath he had originally presented as oath-challenge.

Ariston's oath is accompanied by comments which are interesting for what they suggest about the value and meaning of the practice of oath-swearing. As we have seen, Ariston says he proposed an oath-challenge to Conon, who refused it. Now Ariston anticipates that Conon will swear an oath in his defence speech. Just before Ariston then repeats his own oath from his *proklesis*, he explains that:

Conon, a man of this sort, is certainly not to be believed when he takes an oath, far from it. Rather, the man who of his own free will makes no oath, and would not even dream of swearing an oath on his children's heads, which is not sanctioned by your custom, but would suffer anything rather than do that, and, if an oath is in fact necessary, he is more to be believed than one who swears by his children, even going through fire. I, then, a man who in every respect is more worthy to be trusted than you, Conon, was willing to swear this oath here; not for the same reason as you, to avoid punishment for my crimes, all along committing any act whatever; but rather, I would do it in the interest of truth and so as not to suffer further abuse, with the aim of not losing my case because of Conon's perjury (Dem. 54.40).

Ariston here suggests that swearing an oath of one's own free will is not the mark of a trustworthy man. He implies that it is a sign of a willingness to perjure oneself – thereby making

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<sup>567</sup> See Harris (2013a), 93-95.

an argument similar to speakers who need to justify in their speeches why they did not want to accept a pre-trial oath-challenge: they argue that their opponent is a serial perjurer and therefore that swearing an oath against them would be impossible (see e.g. Dem. 31.9; 49.65-7).<sup>568</sup> Ariston here makes use of the argument that his opponent is a serial perjurer and that a proclivity for oath-swearing demonstrates a proclivity for perjury, but he employs it to argue not against oath-challenges, but against free oaths. Ariston's own oath-swearing is somehow justified because it is a repetition of an oath-challenge and because he swears "for the sake of the truth and so as not to suffer further abuse, with the aim of not losing my case because of Conon's perjury" (Dem. 54.40). Ariston therefore tries on the one hand to invalidate Conon's oath by discrediting its nature as a voluntary utterance as well as its unusually strong form, while on the other hand Ariston evidently feels obliged enough to swear an oath himself in court as a counterweight to Conon's.<sup>569</sup> Furthermore, Ariston's oath probably also functions as a tool of distraction, forcing the judges' attention away from those issues which he does not mention in the oath – such as the crucial issue of who delivered the first blow in the fight.<sup>570</sup> Ariston's statement that freely swearing oaths is a sign of untrustworthiness is evidently rhetorical, as it aims to discredit Conon who is about to swear an oath, and a particularly strong one at that. Yet can this statement be taken seriously? After all, there are very few occasions in which speakers choose to swear a formal oath. We shall return to this point after discussing the last of these formal oaths.

The fourth formal oath makes explicit the imprecatory element of a statement without explicitly referencing a deity. In his *On the False Embassy*, Demosthenes avows that "if it had not been for my desire to liberate those men, may I be utterly and absolutely destroyed (ἐξώλης ἀπολοίμην καὶ προώλης) if any reward would have induced me to accept an embassy with these

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<sup>568</sup> As Martin (2009), 256 investigates.

<sup>569</sup> Martin (2009), 258.

<sup>570</sup> Cf. Sommerstein (2013a), 87.

men” (Dem. 19.172).<sup>571</sup> Demosthenes contends that he would not have accepted the place on the embassy with Aeschines, if he had not made a promise to the captives being held ransom. Here again then the oath statement is a declaration of the speaker’s rationale, his alleged motivation behind a particular action. This is the only imprecation-type oath in the orators. However, it is worth comparing it to a statement made by Demosthenes in the middle of his oration *On the Crown*:

In your presence (καλῶ δ’ ἐναντίον ὑμῶν), men of Athens, I now call all the gods and goddesses whose domain is the land of Attica, as well as Pythian Apollo, the ancestral divinity of this city, (τοὺς θεοὺς πάντας καὶ πάσας ὅσοι τὴν χώραν ἔχουσι τὴν Ἀττικὴν, καὶ τὸν Ἀπόλλω τὸν Πύθιον, ὃς πατρῷός ἐστι τῇ πόλει) and I pray to (καὶ ἐπεύχομαι) them all that, if I shall speak (εἰ μὲν ἀληθῆ) the truth now, and if I spoke truth to my countrymen when first I saw this miscreant putting his hand to that transaction—for I knew it, I knew it instantly—they may grant to me prosperity and salvation. But (εἰ δὲ) if with malice or in the spirit of personal rivalry I lay against him any false charge, may they dispossess me of everything that is good (πάντων τῶν ἀγαθῶν ἀνόνητόν με ποιῆσαι) (Dem. 18.141).

This statement is strictly speaking not an oath but rather a prayer and a call to witness (καλῶ καὶ ἐπεύχομαι).<sup>572</sup> Nonetheless it displays similarities to an oath in its inclusion of a conditional statement and the presence of a self-curse, alongside the invocation of deities.<sup>573</sup> Here too, the statement which the invocation to the gods strengthens concerns the rationale behind an action: Demosthenes avows the truth of his charge of bribery made against Aeschines and asserts that his motive for his arguments and accusations was in no way malice or personal rivalry.<sup>574</sup>

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<sup>571</sup> Cf. also Demosthenes’ plea to the gods at the end of his speech *On the Crown*: “consign them, and them alone, to utter and absolute destruction (ἐξώλεις καὶ προώλεις) by land and sea” (Dem. 18.324). Only two Attic instances of προώλης; see MacDowell (2000), 274-275.

<sup>572</sup> Cf. Usher (1993), 221-222; Yunis (2001), 193-195.

<sup>573</sup> The classification Ott (1896), 40 assigns, a “Fluchform als Eid”, just like the passage from *On the False Embassy* above, is thus understandable.

<sup>574</sup> On the difference between an oath and other types of invocations of deities, especially calls to witness, see Polinskaya (2012); Lincoln (2012). On prayer, see also Pulleyn (1997); Versnel (2015), 448-459.

### *Oaths as consequential speech acts*

The formal oaths sworn in oratory should therefore be seen as consequential religious phenomena. First, that oaths are sworn not to guarantee facts, but rather to act as pledges for the rationale behind speakers' actions, says something about the function of oaths in fourth-century Athens. As the example of the first speech, *Against Aristocrates*, illustrates, the notion of intention plays a vital role in legal trials – in many cases, the charge itself, as well as the punishment attributed to a crime, can differ depending on the motivation which the accused had in performing the action for which he is being prosecuted. That “issues of volition, intention and motivation” were important is evidenced for example in Draco’s laws, which separates out intentional homicide from involuntary homicide, and “an assessment of the perpetrator’s internal disposition thus played a crucial role in the judicial procedure.”<sup>575</sup> The decision to bring the gods in as guarantors to swear statements of intention also corroborates the idea that there is a belief that not just the laws, but the gods too care about intention – although controversial, this is implied by, for example, the fact that in the classical period the intensity of pollution triggered by a crime was believed to depend on the level of culpability of a perpetrator, thereby taking motivation into account.<sup>576</sup> However, intention was of course not only important for issues of legal culpability, but also for the construction of a speaker’s *ethos*. Speakers seem to swear oaths in order to make their own statements about their motives more credible. The rhetorical importance of *ethos* is of course obvious. The fact that the formal oaths sworn in oratory all concern intention demonstrates the way in which speakers use oaths as a tool for the construction of authority. Although oaths by the fourth century may have lost their function as action-deciding elements in decision-making processes, this does not mean they have lost their relevance, but simply that their function has been adapted. By placing statements of intention under oath, speakers are using the oath as a sacralising mechanism (in

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<sup>575</sup> Petrovic and Petrovic (2016), 158.

<sup>576</sup> Cf. Harris (2013c), 132–133 for evidence and discussion.



order to involve the gods) and sanctifying device (giving it the *look* of truth). By bringing in the gods as guarantors of the truth of statements of intention, which cannot be proven by any physical means, a speaker awards a higher, divine authority to a statement. Oath-swearing not only carries with it the notion of divine justice, it also transforms a statement into one with a higher authority, which assigns particular roles to the swearer, the invoked deity and the audience, thereby allowing the speaker to speak authoritatively, as if with the protection of the gods, while forcing the audience to either believe the speaker or else to consider the speaker's action as a religious offence, thereby compelling the audience to assess the situation in terms of the reaction of, and relationship with, the divine.

The second point to make concerns the rarity of formal oath-swearing in the law courts, and its complete non-existence in the surviving evidence for Assembly speeches. Should this be taken as evidence of the insignificance of oaths, or implying that they are mere formalities, or does it stem from the fact that, as Ariston argues in *Against Conon*, voluntarily swearing oaths was not considered a respectable thing to do? Ariston's statement is obviously rhetorical and there is no indication in any of the other instances of oath-swearing that such a practice would be considered to signify a lack of trustworthiness. His statement should therefore not be taken too seriously. Nonetheless, the uncommonness of such oaths does suggest that speakers only rarely considered it beneficial to them and their case to utter an invocation and to swear an oath and curse. One way in which this could be explained is by recognizing the risky nature of oath-swearing. By this is not meant the riskiness located in the sanction of divine punishment, nor should it be identified with the risk which speakers themselves recognize when attempting to justify their refusal to accept an oath challenge, namely that their opponent might lie and that oath-swearing is therefore risky if both parties are not equally pious and trustworthy.<sup>577</sup> Rather, oath-swearing can be considered a risky practice because of the risk inherent in the immutable nature of the oath. Swearing an oath is a mechanism which binds the god and the

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<sup>577</sup> Cf. Xenophanes' expression, "it is unfair for an impious man to challenge a pious one", as Aristotle quotes in *Rhet.* 1.15.29.

swearer to the truth of a statement and places a burden of responsibility on both the deity and the oath-swearer. However, these oaths of intention sworn by the orators illustrate that the act also places responsibility on the receiver of the oath: on those who hear the oath being sworn. In most cases, oaths are after all made to convince others of something: the invoked deity may act as guarantor, but the primary audience is often not the god – in contrast to prayers or other forms of calls to witness. As discussed above, oath-swearing is a speech-act which is not only illocutionary but also perlocutionary.<sup>578</sup> While an oath pronouncement does have an effect in and of the pronouncement itself, it is also usually sworn for a particular reason: frequently to persuade an audience of something. By swearing an oath, the speaker is offering the statement up for judgement to his audience – which in the case of oratory is, of course, the Athenian *demos*. The risk of oath-swearing lies then not simply in the imprecatory element of divine punishment, but in the fact that it boils a litigant's case down to a particular statement or particular points, which obtain disproportionate importance. Oaths are risky because they take control out of the litigants' own hands by transferring a decision directly to the audience, setting up the case as a simple dichotomy: they force the audience to make a decision, to either believe the statement (or act as if they do so) or denounce the speaker as a perjurer.<sup>579</sup> Oaths are not simply risky in the way that speakers themselves portray its risk, as a transfer of power to perjurious opponents, but rather because it incorporates a transfer of power to the audience. The irrevocable and conclusive nature of oaths also explains why the oaths sworn in three out of the four cases concern issues tangential to the case itself. This riskiness helps explain the rarity of formal oath-swearing in oratory: rather than an attestation of irrelevance, of the peripherality of oaths to the norms and customs of Athenian public discourse, this infrequency of oath-swearing is a consequence of the fact that oaths are considered consequential as well as risky.

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<sup>578</sup> Austin (1975), 98-103.

<sup>579</sup> See Lincoln (1994), 109-111 on the oath as a “risky speech act”: he argues that, while appearing to court divine retribution, by making an oath one can transfer the issue to the audience, who must act as if they believe the speaker, or be seen as doubting the power of oaths (110).

To explain the way in which issues of religion are talked about in certain settings, for example in the public discourse of oratory, the notion of appropriateness or propriety is regularly used.<sup>580</sup> Chris Carey for example has illustrated that the restraints and limits placed on public discourse about religion are informal, rather than formal. There was little legislation which governed what could be said about the gods, aside from direct declarations of disbelief: “By and large, Athenian law leaves the gods to fend for themselves, as far as words are concerned”.<sup>581</sup> What can be said is the result of what the audience would find acceptable – gaining the support of the majority of the audience is after all the goal of any speaker in the Assembly or law courts. As Parker recognises too, this means certain things cannot be said: disrespect of ancestors can only be expressed extremely rarely, for example, as also attributions of Athenian misfortune to the gods – more often than not, vaguer entities such as a *daimon* or *Tyche* are awarded responsibility for any adversity (eg. Dem. 18.192).<sup>582</sup> However, while certain sentiments and declarations might be off-limits, the boundaries between the acceptable and non-acceptable are not always fixed. In his analysis of the portrayal of topics of elevated sensitivity, such as sex, Carey recognises that there are variables which affect what a speaker can say: these include the *ethos* of the speaker, the seriousness of the situation, and the type of occasion in which the oration is delivered (the Assembly or the law courts, a private or public case).<sup>583</sup> How such things affect a speaker’s speech can be illustrated by an example discussed earlier in this thesis: appeals to negative emotions such as hate and anger occur with a much higher frequency in

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<sup>580</sup> Carey (1999), who aside from religious matters also discusses the appropriateness of talking of matters tangential to a case, making insults and personal attacks on opponents, and talking of sensitive topics such as sex. Parker (1997), focuses on the representation of the gods in oratory versus in other genres of text. Martin (2009), 294-300, explores the effect of the tone of the speech, the identity of the speaker and his individual style of argumentation on religious argumentation.

<sup>581</sup> Carey (1999), 372.

<sup>582</sup> Cf. Carey (1999), 373-374. As Parker (1997), 155-156 concludes, the gods are nearly always presented as favouring Athens. So too, certain characteristics of the Athenian legal system can be explained by reference to the fact speakers cannot say things which undermine the ideological basis of the democracy. For example, that the *demos* is always right and that any mistakes in policy cannot be attributed to the *demos* means they have to be attributed to individuals: proposers of policies and politicians are regularly accused of failure or bribery, as Todd (1990), 174 points out.

<sup>583</sup> Carey (1999), 387-390. For other examples of how such variables influence what can be said, see Rubinstein (2004), who demonstrates that appeals to negative emotions such as hate and anger occur with a much higher frequency in public orations than in private ones.

public orations than in private ones, as the persona which litigants in private speeches adopt – of a reluctant prosecutor unwillingly forced into litigation by the unfair treatment of their opponent – is less suited to such displays of temper.<sup>584</sup> Variables such as these can influence what is acceptable to say with regard to religious elements too. Martin has demonstrated how religious references are more common in certain types of trials: inheritance cases and maritime suits are low on the scale of frequency of religious references, while public trials and private cases which emulate public trials occupy the other end of the scale. The significance of the subject matter appears to correlate then with religious argumentation.<sup>585</sup> If the riskiness helps explain why swearing an oath might rarely be considered beneficial to the speaker, the variability of appropriateness therefore helps explain why speakers sometimes do take such risks.

#### **4.4 Conclusion: Taking the gods to court**

This chapter has shown that oaths sworn in oratory are consequential. This (rather vague) term means that oaths are not merely rhetorical tools of persuasion or casual interjections completely disconnected from their original function as a mechanism which makes binding an assertion, a denial or a promise, and which transforms it into a statement which has two possible outcomes: true or false. As this chapter has demonstrated, oaths in oratory were sworn in both an immediate judicial context, and also a wider context of a curse-wielding Greek world, in which oath-swearing was taken seriously as a tool for divine justice. Furthermore, utterances invoking deities remain connected to such an oath statement – even informal oaths. By placing statements of intention under oath, speakers swearing free formal oaths employ the oath as a sacralising mechanism and sanctifying device. By bringing in the gods as guarantors of the truth of statements of intention, which cannot be proven by any physical means, a speaker awards a higher, divine authority to a statement. Therefore, oaths are also consequential

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<sup>584</sup> So Rubinstein (2004). See discussion in Chapter Two.

<sup>585</sup> Martin (2009), 294–295.

because they impact on the audience: they are efficacious precisely because they bind not only the swearer and the divine into a course of action, but the audience of the oath too. The incontrovertibility of the oath, its nature as an essentialising tool, means that by swearing an oath, the speaker in a way forces the audience to make a decision, to either believe the statement (or act as if they do so) or denounce the speaker as a perjurer. The oath thereby boils a speaker's case down to a simple opposition, which is a risky tactic to follow. The infrequency with which formal oaths are sworn in speeches delivered in the law courts should therefore not be seen an indication of their inconsequential nature, with regards to the process of the administration of justice, but rather as illustrative of the efficacious, yet risky nature of oath-swearing.

When speakers swear formal oaths, they address their invocations to 'all the gods' or, in the case of Demosthenes 18, "all the gods and goddesses whose domain is Attica as well as Pythian Apollo". This latter formulation can be seen to stress that Aeschines is a threat to Athenian security, but all the formulae imply 'all the gods who might intervene', which means 'all the gods of Attica'. By saying this, the speaker is leaving himself no means of escape from divine punishment. The emphatic nature of these oaths is therefore carried through to the choice of oath-gods. In contrast, as we have seen, informal oaths appear to be emphatic exactly when the opposite is the case – when the invoked entity is not 'all the gods' or the father of the gods, but individual, named deities. Here, however, the emphaticness stems from the fact that the domain of those individual gods might have relevance to the subject. In the deliberative and forensic speeches of fourth-century Athens, individual gods are not often named.<sup>586</sup> This can be contrasted to tragedy, for example, where individual gods are present on the stage. This might be explained as a belief that in real life and its portrayal in oratory, the Athenians would not know which god might be going to intervene in human affairs, so tend to be much vaguer, or more general in their invocations. When gods are therefore called out by name, as in uncommon informal oaths, this is noticeable.

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<sup>586</sup> Parker (1997), 158.

Of course, not all oaths are made equal. The additional functions which informal oaths – in particular oaths to Zeus – have acquired, as signposts for certain types of arguments and for the importance of the subsequent statement – make evident that not all oaths sworn are equally seriously, or considered to be equally binding. A sliding scale of oaths exist, of which the intensity and binding nature varies. Oaths which invoke uncommon or multiple oath-gods, or which are more elaborate in form, appear more important precisely because certain oaths and casual invocations to the gods are commonplace, scattered throughout speeches. However, it is not because they are commonplace that they cannot at the same time still be considered as an oath, as invocations of deities which emphasise the truth of statements. In classical Athens, the gods were after all considered to be everywhere. Oaths, both informal and formal, are often simply and dismissively called ‘rhetorical’. Martin, for example, says of the free formal oath in Demosthenes’ *Against Conon* that:

“the oath itself has no procedural consequences, only an emotional effect or one enhancing credibility. So it is nothing but a rhetorical means of influencing the dikasts in a subliminal way. It does not even lend particular force by an official form in which it is taken.”<sup>587</sup>

Evidently there is indeed a strong rhetorical element to oaths such as this. But how exactly does this rhetorical element function? Martin does not really explain *how* they might “enhance credibility”.<sup>588</sup> ‘Rhetorical’ can be a meaningless term, as saying an oath is rhetorical does not really say anything at all: it does not explain – crucially – why people swear oaths. Rhetoric is the study of the means of persuasion in speech, but one cannot persuade a person unless one appeals to his or her strong beliefs. Oaths can only be rhetorical if they are persuasive, and to

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<sup>587</sup> Martin (2009), 259.

<sup>588</sup> While Martin (2009), 263-264 recognises oaths in oratory do, to a varying degree, carry religious significance, he does at times downplay their importance by equating value with certain elements, such as rate of occurrence or level of compulsion: for example, he suggests religious elements such as oaths are often “uncontroversial commonplace” (292-293). Though correct, this does not necessitate the automatic leap he proposes to a complete loss of religious meaning. So too, he maintains oaths and religious elements which are “inherent” in the trial, as compulsory parts of the procedure of litigation, are not religious forms (251) – here equating compulsion with a loss of religious significance.

be persuasive they have to be considered consequential. Peter Rhodes' explanation of the 'only a topos' fallacy can be usefully applied here. He recognises this as:

“the fallacy of supposing that, once you have decided that a passage is a *topos*, a conventional remark, you can dismiss it from further consideration and need never ask whether the remark is true.”<sup>589</sup>

He further observes that “the fact that a passage is a *topos*, that it says what is conventionally said in a particular situation, and perhaps expresses it in a conventional way, does not exclude the possibility that it is an authentic report, or that what is stated is true.”<sup>590</sup> The same can be said of the rhetorical nature of oaths: it does not follow that, because they are rhetorical, and because they are expressed in a conventional way and occur regularly, they cannot at the same time be taken as authentic oaths, as mechanisms which swear to the truth of a statement and invoke a deity to make this binding.

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<sup>589</sup> Rhodes (1994), 157.

<sup>590</sup> Rhodes (1994), 158.

## Chapter Five: Laws

The foregoing investigation commenced with an analysis of explicit sources of religious authority, namely oracles and dreams. Divine signs originate outside the immediate settings of Attic oratory – the law courts and the Assembly – and therefore function as evidence imported in the speeches delivered there. As Chapter Two has demonstrated through its study of oracles, such signs can be proofs, formal or not formal, while Chapter Three has explored how divine messages like dreams also operate as decision-making devices, which nonetheless end up disputed in a court of law. Chapter Four then examined oaths: while themselves not sources of authority with a divine origin, oaths similarly function as mechanisms through which speakers import the gods into the court or the Assembly. This final chapter of the investigation turns to law. Unlike the previous three subjects studied, law does not, at first sight, have an expressly religious dimension. Also unlike them, law is not a source of evidence or mechanism imported into the settings of oratory; rather, it provides a framework to these very settings. This second point explains why a discussion of law is relevant in a thesis on religious authority, despite the first point: as tool of the *demos*, it is law which is the most significant expression of human authority in our sources. Consequently, this study of divine authority ends with an examination of the way human and divine authorities relate to each other. How is their relationship conceptualised in the speeches of the orators? Which mechanisms or devices exist in these orations, public discourses infused with the authority of *nomoi*, to connect the divine with the authority of the law? How were law and the divine made to complement each other, or in the very least not conflict with each other?

The connection between religion and law is of course an extremely wide-ranging matter which in fact appertains to the very essence of the nature of Greek society, and as such can be approached from a number of different angles. One could, for example, focus on religious



wrongdoing, on the crimes of impiety and sacrilege and the notion of pollution.<sup>591</sup> Or one could focus on so-called ‘sacred law’, on the evidence for the legal and prescriptive regulations of ritual action.<sup>592</sup> Acknowledging it cannot be comprehensive in its study of the intersection of religion and law, this chapter aims to be representative. It will proceed to examine two ways in which the divine and the law, and their respective authorities, relate in the speeches of the orators: namely through legislation and enforcement. This thesis has focused on the attribution and construction of religious authority to examine how the orators say what they do about the divine, and as such it will start here by examining the legitimacy and origin of law. How is the legislative process conceptualised in oratory and what is the relation here between human and divine agency? There is little direct evidence for the idea of divine law in oratory, so the few passages that do suggest so are regularly dismissed. Yet they deserve a re-examination to nuance some widely held views on the role of the divine for legislative activity. This chapter will move then from the legislative stage to the executive one, examining the role of the gods in the *enforcement* of law, and consequently the divine’s relation to the enforcement of justice.

## **5.1 *Nomoi* and *theoi***

### ***The concept and function of *nomos****

The orations of Demosthenes, Andocides and their fellow orators exist because disputes between two people in ancient Athens were resolved through a court of judges, based on a code of law established, at least by the fourth century, by a legislative procedure which also involved the Assembly.<sup>593</sup> Many of the speakers in every meeting of the Assembly would have, at some earlier point, sworn the ephebic oath, in which, alongside defending matters *hiera* and *hosia* and sustaining their *patris*, Athenian male citizens swore “to obey those who exercise power at any

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<sup>591</sup> On impiety, see below.

<sup>592</sup> Cf. Chaniotis (2009); Harris (2015a); Carbon and Pirenne-Delforge (2017); Mikalson (2016).

<sup>593</sup> Canevaro (2015).

time sensibly and the laws established and those established sensibly in the future (καὶ τῶν θεσμῶν τῶν ἰδρυμένων καὶ οὐκ ἂν τὸ λοιπὸν ἰδρύσωνται ἐμφρόνως)“ (RO 88; cf. Lyc. 1.77).<sup>594</sup> However, it is in the law courts that the centrality and significance of law in ancient society receives its full expression. The judge’s oath conclusively bound the judge to consider and follow the law in the deliberation of his verdict: one of the oath’s principal clauses, of which litigants frequently liked to remind their audience, was “to vote in accordance with the laws” (eg. Aeschin. 3.6; Andoc.1.2; Hyp. 4.40; Lys. 22.7; Dem. 18.121).<sup>595</sup> Specific law statutes or decrees were regularly cited by speakers to bolster their arguments, both legal and other: they either simply discussed the law themselves in their speech, or in addition presented a copy of the statute as a deposition of evidence, read out by a clerk.<sup>596</sup> However, besides particular individual laws, litigants referenced and discussed the concept of law itself, of νόμος, even more frequently: they repeatedly expounded on the sovereignty and centrality of the laws, praising them for regulating the habits of men (Aeschin. 1.138), preserving the city (Dem. 25.21) and guarding the democracy (Aeschin. 1.4; 3.6). In the judicial confrontations that took place in Athens’ law courts and in the verbal political battles waged in the Assembly, the law was never far from centre stage. The law, as portrayed in forensic oratory, indisputably and distinctly held high authority in Athenian society.

The historical accuracy of the orators’ portrayal of discourse on the law remains a matter hotly debated. It differs, for example, from the characterisation of νόμος in Aristotle’s *Rhetoric* as one of the ἄτεχνοί πίστεις, ‘non-technical proofs’. They are joined in this category of evidence by witnesses (μάρτυρες), as Chapter Two already discussed, as well as by contracts (συνθήκαι), oaths (ὅρκοι) and the testimony of slaves acquired through torture (βάσανοι) (*Rhet.* 1.15). This categorisation of law, and – more importantly – the accompanying definition of law as a form

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<sup>594</sup> The use of θεσμός rather than νόμος here is archaic, like the verb κρινόντων. On the different terms for law, see below. On the inscription’s archaic language, see Rhodes and Osborne (2003), 445–446.

<sup>595</sup> On oaths in general, see the previous chapter. There are 135 allusions to the oath in the orators: see the useful appendix at Harris (2013a), 353–356.

<sup>596</sup> On the citation of laws for a variety of reasons, see, for example, de Brauw (2002) on laws utilised for *ethos* arguments, which develop the portrayal of a speaker’s character. For a complete list of all the laws cited in the orators, see Harris (2013a), 359–377.

of evidence, has formed the starting point for some scholars as they have interpreted the role of law in Athenian society. Those who subscribe to the ‘law and society’ approach point out the difference between this ancient concept of law as evidence and modern ones, which see law rather as the *rules* under which evidence – concerned only with establishing issues of fact – are to be considered.<sup>597</sup> This approach argues “laws, like other forms of evidence, served to persuade rather than to bind an Athenian court” and as such were only one of many tools used in the agonistic contests played out in the law-courts.<sup>598</sup>

Those scholars, on the other hand, who advocate for a ‘rule of law’ approach argue, “the Greeks were united by a common belief in the rule of law, which is reflected in the shape of their statutes”.<sup>599</sup> They see legality as the most important consideration in most law-court trials, and thus view the authority of the law as separating it out from, and elevating it above, other types of evidence used in forensic and political discourses.<sup>600</sup> This approach is a better fit with the picture of fourth-century Athenian law enforcement which the speeches of the Attic orators transmit, and this thesis therefore subscribes to the rule of law theory.<sup>601</sup> Formally laws may be presented as a means of proof similar to other depositions of evidence, but the status of law distinguishes them: laws were protected procedurally in a much stricter sense.<sup>602</sup> Furthermore, they were privileged in the decision-making process: as noted above, judges swore to vote according to the laws and decrees of the Assembly and Boule.<sup>603</sup> The debate over the nature of law asks important questions about law’s authority, specifically its degree of absoluteness. Crucial here is the ambiguity which resides in Greek attitude to law – something most advocates

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<sup>597</sup> Todd (1993), 58. See also Cartledge, Millett and Todd (1990); Cohen (1995); Lanni (2005).

<sup>598</sup> Todd (1993), 60.

<sup>599</sup> Harris (2006), xx.

<sup>600</sup> See Carey (1996a); Harris (2013a), 3-13; Rhodes (2004).

<sup>601</sup> Harris (2013a); Harris (2006); Todd (1993).

<sup>602</sup> The penalty for introducing a non-existent law, compared to a false witness statement or contract, was death: Dem. 26.24.

<sup>603</sup> Carey (1996a), 34. He bases the weight of his rejection of Aristotle’s presentation of law on the fact that attacks against the law, by recourse to *epieikeia*, which Aristotle allows for, do not appear to happen in the real trials described by the orators: see 37-41.

of both approaches recognise: the authority of law can never be said to be absolute, nor is it really wholly comparable to other ἄτεχνοί πίστεις described by Aristotle.<sup>604</sup>

While law constitutes the structure which frames and the rules which transform an argument into a legal disputation, what exactly this means in practice is more complicated. Law may well be a third voice which enforces a decision on two opposing sides, yet law is also no simple, fixed entity: it constitutes the normative (and norm-enforcing) practices and rules of a people, according to these people.<sup>605</sup> The law prescribes or prohibits certain acts, but the interpretation of these statutes depends on the legal as well as social interpretation of a multitude of variable factors, ranging from the acts stated in the law, the language of the law, the facts of the particular case to which the law must be applied, the relationship between the acts denoted in the law and the facts of the particular case. As such, law is a complex social construct. This chapter focuses on one aspect which has the potential to complicate and thereby nuance the discourse and application of law – namely its relation to the gods and to divine authority.

So far, this chapter has referred to law as νόμος. This term is used in the fifth- and fourth-century speeches of Athenian litigants and political speakers to refer to law. After the legislative reforms of 403/2 BCE, the Athenian *demos* decided on some rules to define in essence what a *nomos* is: a decision made by the Assembly or Council, written down or inscribed – as unwritten laws, *agraphos nomos*, could no longer be employed (Andoc. 1. 89).<sup>606</sup> It is a norm which has universal applicability as its command pertains to everyone in general. *Nomos* is consequently distinguished from *psephisma*, a decree or a rule which can apply to only a single individual. Laws also carry higher authority than decrees, as no *psephisma* may overrule a *nomos*

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<sup>604</sup> Both Carey (1996a), 41 and Harris (2004), 41–44, for example, recognise an awareness of its ambiguities in Greek understandings of *nomos*.

<sup>605</sup> Cf. Lincoln (1994), 56, whose conceptualisation of the process which takes place in a court of law as two adversaries yielding to a third, which is the authoritative voice of law, usefully emphasizes the various elements in relation to which law is both created and employed: ‘law’ is a disinterested notion, yet constructed; it is transcendent yet can be linked to particular persons. Law is also intertwined with established traditions, and linked, whether in correlation or not, to the notion of justice.

<sup>606</sup> On the concept of unwritten law and on the legislative changes of the late fifth century, see below.

(Andoc. 1. 89).<sup>607</sup> The decade of change and counter-change with which the fifth century closed saw not only reform in the legislative procedure, affecting how new laws were made, but also included a republication of the existing laws of the city. We will come back to the importance of these changes later. Most of the extant speeches from the law courts and Assembly post-date these legislative reforms of the late fifth century, and Hansen has shown that in general the definition of *nomos* and the *nomos-psephisma* distinction were upheld.<sup>608</sup> However, as we are examining here the origin of law, we need to go further back in time, where we encounter a more complicated vocabulary: earlier usage of the term *nomos* reveals it had a wider range of meaning before the fourth century, signifying custom, rule of conduct, traditional practice, social or religious norm, or even song or tune.<sup>609</sup> The first words used to designate ‘law’ do not include *nomos*, but include *thesmos*, *rhētra* and *grapha*.<sup>610</sup> *Nomos* only began to be used to mean law or statute from 500 BCE onwards, in particular for law written down.<sup>611</sup> It is important to keep this semantic history in mind, as it warns against any oversimplification of these terms, especially considering that, while the use of the term *nomos* for ‘written law’ is quite steadfast and consistent in the period and source material we are examining, *nomos*’ meaning of ‘custom’ remains in use at the same time too.<sup>612</sup>

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<sup>607</sup> See Hansen (1999), 170-175 for discussion of the evidence.

<sup>608</sup> Hansen (1978). There are a few occasions from early speeches where this is not yet so: we will come back to one (Lys. 6.8-9) later on.

<sup>609</sup> On early law, see Gagarin (2008), esp. 13-38; on the concept of *nomos*, see also Ostwald (1969); on definitions of law, see Harris (2013a), 138-139; on the question of written versus unwritten dimension of law, see Thomas (1996), 16-19.

<sup>610</sup> Gagarin (2008), 34.

<sup>611</sup> Thomas (1996), 16-17.

<sup>612</sup> Cf. Gagarin (2008), 34, who discusses a passage in Plato’s *Laws* (793a-c) where *patrioi nomoi* are considered synonymous with *agrapha nomima*, both meaning ‘customs’, yet distinguished from *nomoi*, ‘laws’.

## 5.2 The origin of laws: gods and legislators

### *The archaic legislator in Attic oratory*

How to deal with the question of law's origin depends very much on where we go looking for answers. Law in oratory is, for the most part, human. It is presented as written by the *demos* for the *demos*. The laws themselves make this clear: their inscription includes statements such as "resolved by the Council and the People" or "resolved by the *nomothetai*".<sup>613</sup> Yet when speakers in the Assembly or law courts discuss in any depth whence law comes or who wrote it, they mostly refer to the figure of the lawgiver, ὁ νομοθέτης or ὁ τὸν νόμον τιθεῖς. Legislative responsibility is assigned to 'ancient lawgivers', either in plural or singular. In the second half of the fourth century, this generic lawgiver is more and more regularly replaced by a specific, named legislator: at times Draco, but most often Solon.<sup>614</sup> That Solon became an important figure in the ideology and rhetoric of law in the fourth century has long been recognised, evident not only from oratory but also from the role assigned to him in the *Athenaion Politeia* (28.1). This 'nomothetic discourse', as Canevaro has termed it, gives rise to the phenomenon that Solon's output of laws continued to grow two centuries after his death: even in the fourth century, recently enacted laws were still at times attributed to Solon. For example, a law on office holders under the Thirty (Andoc. 1.95) or even the law establishing the *nomothesia* itself, which was an innovation of the late fifth century (Dem. 20.92), could be attributed to the legislator who lived during the early sixth century.<sup>615</sup> Many traditions developed of ancient lawgivers in the classical and later periods, which often attribute divine inspiration, support or

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<sup>613</sup> On the different enactment formulas, see Rhodes and Osborne (2003), xix.

<sup>614</sup> See Ruschenbusch (1958), 399-401, who counts Solon mentioned in only 3 of 75 extant speeches before 356 BC, and in 17 of 64 after that date.

<sup>615</sup> On Solonian law and the attribution of law as Solonian, see Ruschenbusch (1958); Hansen (1999), 298-300; Thomas (1994), 121-122.

endorsement to these lawmakers.<sup>616</sup> Remarkably, however, such traditions of divine inspiration do not exist for the early lawgivers of Athens.<sup>617</sup>

References to archaic lawgivers in oratory can in part be understood as “an expression of the common Greek desire to find a first originator, an inclination reminiscent of the *patrios politeia* arguments, using the past to authorise the present”.<sup>618</sup> However, Mogens Hansen and Rosalind Thomas have also shown that when litigants reference Solon and his laws, “they were not simply trotting out the clichéd terminology for ‘current Athenian laws’, but did actually mean to talk about what they thought of as an historical person”.<sup>619</sup> Specific laws are not only assigned the label Solonian to increase the authority and prestige of the law in question, but Solon is also frequently referenced as a person. Orators often invoke Solon, Draco, and the unnamed νομοθέτης as legislators to make inferences about *intention* in legislation.<sup>620</sup> Litigants and speakers discuss and explicate the reasoning behind the laws and build arguments from this, as Thomas has confirmed.<sup>621</sup> In Lysias’ *On the Murder of Eratosthenes*, for example, the speaker quotes a law regarding justifiable homicide, to discuss whether a man can kill another caught with his wife. The speaker claims the fact that the νομοθέτης envisioned the same punishment in the case of concubines who mattered less, as in the case of married women, demonstrates

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<sup>616</sup> Hdt. 1.65; Xen. *Const. Lac.* 8.5, Plut. *Lyc.* 5-6; Plato *Laws* 1.624a discuss the Spartan lawgiver Lykourgos, who received endorsement for his legislation from the Delphic oracle. Cf. Hdt. 1.64.4 on Lykourgos’ royal Spartan blood and connection to Herakles. On divine influence for Cretan law, see Plato *Laws* 1.624a-b; cf. Plut. *Numa* 4.7. A story concerning Zaleucus of Locri claims he received the laws directly from Athena in a dream: Arist. *frag.* 548 (ed. Rose); cf. Naiden (2013), 87. On these traditions, see Gagarin (1986), 58-62; on the post-classical traditions also especially Szegedy-Maszak (1978) and on Plato’s presentation of law-making gods see Mikalson (2010b), 228-229.

<sup>617</sup> The Athenian *nomothetai* lack divine connections in later traditions: Cleisthenes allegedly consulted the Delphic oracle for the choice of the ten heroes which were to give their names to the ten Athenian tribes ([Arist.] *Pol. Ath.* 21.6; Paus. 10.10.1), but this does not equate to divine endorsement of this reform, let alone his reforms as a whole: the god was merely consulted on the particulars of the choice of heroes, not the necessity or justness of the reform itself. Moreover Solon, the most important of all Athenian lawgivers, is also not represented as divinely inspired in his role as legislator. Plutarch in his *Life of Solon* (14.3) does have him receiving an oracle from Delphi, thus adding an element found in the traditions of other famous archaic lawgivers. Even here though the oracle does not concern Solon’s laws, only his role as leader of Athens, and Plutarch represents a late source. Regarding Draco, the other significant early Athenian legislator, no traditions about his life or details about his law-making are recorded.

<sup>618</sup> Thomas (1994), 124.

<sup>619</sup> Thomas (1994), 122. See also Hansen (1990), 71-99 on the assignation of the ancestral constitution to Solon, rather than Kleisthenes or any later figure.

<sup>620</sup> E.g. Aeschin. 1.183, 3.175; Dem. 18.6-7, 23.79, 33.1-2, 57.31-32; Hyp. 3.22; Lys. 26.9.

<sup>621</sup> Thomas (1994).

the νομοθέτης “was so strongly convinced of the justice of this. (...) Now surely it is clear that, if he had had any heavier punishment than this for the case of married women, he would have imposed it” (Lys. 1.31). By appealing to the lawgiver’s intention, orators are, as Thomas avers, “effectively, or at least potentially, going beyond the law itself, it is an extra-legal argument which seeks to appeal to the source of the law rather than to the law”.<sup>622</sup> Furthermore, the nomothetic tradition, as Canevaro has argued, heals the almost inevitable tension between a reality of legal change and a need for stability and consistency within the law, by allowing the creation of a discourse of such stability.<sup>623</sup> In legal and political speeches, therefore, legislation is an activity dominated both by law’s portrayal as a product of, and tool for, the power of the *demos*, as well as by the prominence of the nomothetic tradition.

### ***Law-making gods in Attic oratory***

If laws in the Attic orators’ speeches are mostly products of human creation and judgement, there are a few passages which suggest otherwise. They bring the gods into the process of legislation – even if, as we shall see, these passages all require qualification. The first two possibly refer only to homicide laws and regulations, while a third discusses unwritten law and a fourth can be disregarded as inauthentic. As these instances are so scarce, they have not been taken very seriously: in works of legal and political historians, the human origin of law is taken for granted, and there is very little mention, let alone discussion, of the notion of divine involvement in the legislative process.<sup>624</sup> Studies on Greek religion, on the other hand, do acknowledge the discourse of divine law in ancient Greece. This is after all a notion found widely in other genres of literature and types of evidence. In tragedy, poetry and philosophical writings, gods (or a particular god) are regularly portrayed as the authors of laws (e.g. Pl. *Critias* 109c-d, 119c-d; Eur. *Ion* 442-443; *Supp.* 526-563), or laws are conceptualised as divine through the deification of judicial principles, such as Dike (Soph. *Antig.* 450-452), Nomos (Pl. *Ep.* 354e-f)

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<sup>622</sup> Thomas (1994), 124.

<sup>623</sup> Canevaro (2015), 2.

<sup>624</sup> See, for example, Harris (2013a); Hansen (1999); Ober (1989); Lanni (2006).



or Themis (*Hymn Hom.* 23).<sup>625</sup> The gods can also be connected to legislation through construction of the legal system: most famously, Aeschylus tackles the creation of the Areopagus court as an act by the goddess Athena, thereby giving divine authority to the procedures by which it judges homicide cases (*Eum.* 484). Additionally, gods could also shape laws by providing divine inspiration, support or endorsement to human lawmakers.<sup>626</sup> Finally, poetic, tragic and philosophical texts present law as a product of the divine through the concept of ‘unwritten law’ (*agraphos nomos*), which developed from the second half of the fifth century onwards.<sup>627</sup> Yet with regard to the portrayal of divine law-making, there is little discussion which considers the different contexts of oratory and other literary genres. The exceptionality of the few cases in which a speaker at a trial where adjudication hinges on the rule of law suggests divine involvement in legislation.<sup>628</sup> In a recent survey of gods and men in ancient Greek conceptions of lawgiving, Hannah Willey does provide a more in-depth examination of the issue, recognising the varied ways in which divine law can be conceptualised, as well as the collaborative nature of many of these conceptualisations where human and divine agency are combined.<sup>629</sup> However, using a wide lens to look at Greek culture as a whole, across time and genre, Willey does not untangle the distinction between oratory and other genres, thereby making the few oratorical instances of divine law appear less exceptional, mixed in with the literary representations discussed above.

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<sup>625</sup> See Harris (2004), 26-29, who collects the evidence. See also Mikalson (2010b), 228-229 on the philosophical conceptions concerning laws made by gods.

<sup>626</sup> See above, detailing the difference between Athenian legislators and other ones in this regard.

<sup>627</sup> The development of ‘unwritten law’ is closely connected to the development of the idea that law is written down. What counts as unwritten law, what its conceived relation to justice was, and when it became distinguished from written law are questions still hotly debated: see Thomas (1994), 16-19; Ostwald (2009 [1973]); Gagarin (1986, 9-12); Papakonstantinou (2008), 20-26. Also Aristotle’s *Rhetoric* (1.10; 1.13; 1.15), which demonstrates the complexity of the relationship between written and unwritten *nomoi*. See the famous *Soph. Antig.* 454-455, with Harris (2004). Unwritten law is of course not always necessarily divine: *Thuc.* 2.37.3, with Ostwald (2009), 140. Yet in certain sources, unwritten law is clearly of divine character, and the belief that written law conforms to these divine, unwritten counterparts – thereby giving the gods a hand in lawgiving – is found frequently: e.g. *Heraclitus fr.* 253; *Plato Cri.* 54c6-8; *Soph. Antig.* 450-455; *Soph. O.T.* 863-871.

<sup>628</sup> See, for example, Dover (1974), 255-261; Mikalson (1983), 27-30. Martin (2009), like Dover, ignores the spurious nature of the most interesting of the passages.

<sup>629</sup> Willey (2016).

It is therefore worth re-examining these few instances where speakers in the law courts imply divine involvement in the formation of laws, despite their small quantity and need for qualification. Firstly, they provide nuance to the idea that law in public discourse is always wholly human. Secondly, and more significantly, they offer a source for the exact nature of the relationship between the law and the divine. This thesis will not dismiss these passages as exceptional, but rather scrutinises the kind of divine law they envision and why these notions emerge when they do. In the process, it will evaluate them as moments when somehow, for some reason, the speakers of these speeches decide to break with the normative discourse of the origin of law, and as such, they reveal something about how law is conceptualised with regard to the divine. It will not only highlight the variety in conceptions of divine lawgiving or the collaborative nature of many of these conceptions, but also argue divine law is debated in contexts religiously significant and particularly solemn precisely because these are contexts in which the divine is closely present and human knowledge of the gods is more developed.

The first passage presents the laws as direct product of the gods. It comes from Antiphon's logographic speech *Against the Stepmother*, dated to the 410s BCE. The speaker accuses his stepmother of murdering his father by use of poison. In his introduction to the speech the speaker asserts:

If I prove that my opponents' mother murdered our father intentionally and with deliberation, after being caught not merely once, but repeatedly, in the act of contriving his death, then avenge first your laws (τοῖς νόμοις τοῖς ὑμετέροις), which you received from the gods and your ancestors (οὐς παρὰ τῶν θεῶν καὶ τῶν προγόνων διαδεξάμενοι) and which enable you to give judgement regarding convictions in the same way as they did; and secondly avenge the dead man, and at the same time help me who is left here all alone. (Antiph. 1.3)

The statement is merely a passing reference in the speaker's opening gambit appealing for sympathy from the jury. Yet it declares that judges should avenge laws, that these laws come from the gods or from ancestors, and that these laws aid judges in making a decision in line with what gods and/or ancestors would have done. The speaker assigns the provenance of laws

to both the gods and the ancestors, designating the role of legislator to divine and human agents alike.<sup>630</sup> The *nomoi* which require avenging could be taken either as referring to the whole body of Athenian law in general, or – more likely in this context – homicide laws in particular.<sup>631</sup> The laws concerning murder putatively come from the ancient lawgiver Draco, considered long-established and resistant to change. As the *Ath. Pol.* suggests, tradition held that when Solon took over as legislator he kept Draco’s homicide laws uniquely without adaptation (*Ath. Pol.* 7.1). As such they are often presented as distinct. Furthermore, as an offence which carries with it *miasma*, homicide has also always been a crime particularly connected to the divine, as our next example demonstrates.<sup>632</sup> Draco is not mentioned by name in the speech: the speaker prefers to refer to the source of law as “the gods and your ancestors”. The function of this designation may be deduced from the language used: the speaker casts the job of the judges as one of “avenging first your laws and, secondly, the dead man (τιμωρῆσαι πρῶτον μὲν τοῖς νόμοις τοῖς ὑμετέροις (...) δεύτερον δ’ ἐκείνῳ τῷ τεθνηκότι)” (24), a command repeated at the close of the speech. This presentation of a double victim in need of avenging highlights both a public and a private wrong have been committed which require redress. Additionally, it places the judges in the role of the Erinyes: they must avenge not only this particular man, but also the norm itself that prohibits killing, as expressed by the laws. By suggesting the gods created these laws which the audience must avenge, the speaker in fact adds the gods to the list of actors whom the audience are entreated to aid: not only the dead man and the dead man’s son, but also the laws and the gods themselves.

A second reference to divine involvement in the creation of legislation differs from that above, as it declares not that the gods construct laws but rather that they devise the customs of a legal institution. Demosthenes’ *Against Aristocrates* is an oration written for Euthycles in 352 BCE, which makes a statement on the origin of the customs and proceedings of the Areopagus court.

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<sup>630</sup> Cf. Willey (2016), 188.

<sup>631</sup> Cf. Dover (1974), 255.

<sup>632</sup> On *miasma* and the religious dimensions of homicide, see Parker (1983), esp. 104-143; cf. also Harris (2015b) and Petrovic and Petrovic (2016), 158-165.

In this *graphe paranomon* Euthycles prosecutes Aristocrates for proposing a decree which awards the mercenary leader Charidemus special protection, including inviolability. Euthycles argues this decree is unlawful and makes significant use of religious argumentation in his attack on its legality (Dem. 23.24-99).<sup>633</sup> Euthycles contends anyone who harms Charidemus would receive punishment without a trial, which would be ἀνόσιον (76) and endanger the purity of the city. He further claims the proposed decree would violate the Draconian laws on homicide and could therefore result in the city incurring pollution by blood-guilt (42-43). Homicide laws are here explicitly assigned to Draco: “This law is a law of Draco, men of Athens, like all the others which I have cited for comparison from the homicide laws; and you must examine carefully what he said” (51). The regulations of such venerable institutions as the Areopagus court, which dealt with homicide, are also said to be contravened by the decree (70).<sup>634</sup> As evidence for the greatness and sacredness of the court of Areopagus, Euthycles recounts its mythical (64: μυθώδης) origins. It was on the Areopagus hill that the gods brought their own cases of dispute to be judged, and where they sat to deliver judgement themselves. Analogous with the divine aetiology in Aeschylus’ *Eumenides*, Euthycles adduces the disputes between Poseidon and Ares and between Orestes and the Eumenides (66).<sup>635</sup> The speaker proceeds to highlight the Areopagus court’s significance, solemnity and sacredness through discussion of the oaths sworn by litigants in cases brought before this court.<sup>636</sup> The oath made by the prosecutor is described as “not an ordinary oath, but as one which no man swears for any other purpose” (68).<sup>637</sup> Its solemnity is highlighted through a description of its proceedings, as well as the “stain of perjury” and destruction which will befall a man if he lies or breaks this oath (68). This dramatic description of the Areopagus oath as extraordinary has a clear rhetorical aim, emphasising as it does the significance of the Court (and consequently its homicide laws, which

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<sup>633</sup> Martin (2009), 122-127 discusses the speech’s religious argumentation.

<sup>634</sup> Aristocrates muster religious argumentation by arguing the justice and rightfulness of these courts, institutions and their laws stem from their conformity with religious requirements: Martin (2009), 124-125.

<sup>635</sup> Cf. Dinarchus’ *Against Demosthenes*, in which he bestows authority on the Areopagus court by stating, “the *seminia theai* too, in their case against Orestes, abode by the judgement of this council, associating themselves for the future with its reputation of truth” (Din. 1.87).

<sup>636</sup> The beginning of the speech also contains one of the only four formal oaths sworn in oratory: see Chapter 4.

<sup>637</sup> Cf. Antiph. 5.88, which utilises the same rhetorical strategy, contending homicide trials are distinct from any other type of trial in order to enhance the gravity of the judgement under consideration.

are allegedly under threat by Aristocrates' decree). Euthycles discusses the defendant's oath too, and attempts to provide an explanation for a peculiarity in this oath, namely the fact that defendants at the Areopagus court could withdraw from the case after their first speech. He explains:

“Now why is that so, men of Athens? Because they who originally ordained these customs (τὰ νόμιμα διαθέντες), whoever they were, heroes or gods, (οἵτινές ποτ' ἦσαν, εἴθ' ἥρωες εἴτε θεοί) did not inflict a penalty on misfortune, but humanely alleviated its calamities, so far as they honestly could.” (70)

It is not the *nomoi* of the Areopagus court which are ordained by gods and heroes, but the νόμιμα, used here to refer to the procedural rules regarding oaths and litigant's withdrawal from a trial. A few sentences later Euthycles broaches νόμιμα again, together with laws, concluding it is the “written laws and unwritten customs” (τοὺς γεγραμμένους νόμους καὶ τᾶγραφα νόμιμα) of the Areopagus court which Aristocrates' proposed decree is contravening (70). The νόμιμα, ostensibly ordained by heroes or gods, are also unwritten. Following the speaker's reference to the Court's aetiology, the heroes or gods envisioned here as legislators could be those already mentioned: Poseidon, Ares, Orestes and the Eumenides. However, the speaker keeps his statement vague, not naming anyone and alluding to the indeterminacy of such points of origin (“whoever they were”).

This passage shares the uncertainty of the statement in Antiphon's *Against the Stepmother* and equally distributes the attribution of creation to two entities, one human, one divine – even if it is not a collaborative ‘and’ connecting the two groups here, but an alternative ‘or’. The inclusion of heroes might be taken as a reference to the earlier-mentioned Orestes, who is not usually credited with an active role in the establishment of the Areopagus court, whose judgement he receives. Both the reflections on the origin of law and legal custom occur in relation to homicide proceedings, where Draco traditionally features as legislator. There is, as we have seen, no element of divine influence, inspiration or approval in any references to Draco – or to any of Athens' famous ancient lawgivers for that matter: they are presented as decidedly

human. Divine and human agency can ostensibly function together in the writing of laws and the creation of legislative procedures.

The third passage in connection with divine law comes from the pseudo-Lysianic *Against Andocides* (Lys. 6). It concerns the trial of Andocides, which took place in 400/399 BCE and was an *endeixis*, a procedure used to prosecute people exercising rights to which they were not entitled. The official accusation against Andocides focused on two specific actions: attending the Mysteries in infringement of the decree of Isotimides, which banned those convicted of impiety from entering temples (Andoc. 1.71), and placing a suppliant's bough in the Eleusinium (Andoc. 1.110).<sup>638</sup> However, the allegation brought against Andocides was actually one of impiety, for his complicity in the events of 415 BCE, the profanation of the Mysteries (περὶ τῶν μυστηρίων ὥς οὐτ' ἔμοι ἡσέβηται: Andoc. 1.10) and mutilation of the Herms (Andoc. 1.34).<sup>639</sup> Andocides' defence speech *On the Mysteries* is preserved (Andoc. 1), while the pseudo-Lysianic oration *Against Andocides* gives a sense of the opposing side's argumentation: its assignment to Lysias has been almost universally rejected, but it is mostly accepted as a genuine speech from the trial, delivered by one of the prosecutors.<sup>640</sup>

Readers of both speeches have been principally preoccupied with these orations' depiction, definition and exploration of the concept of impiety, or *asebeia*.<sup>641</sup> This chapter has a different focus: the relationship between the authority of the law and the divine. The nature of law itself, in particular the concepts of written and unwritten law and the tensions between these, play an important role in both speeches, as the trial took place against the backdrop of the political upheaval and legislative transformations of the late fifth century. Following a review of the

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<sup>638</sup> On the decree of Isotimides, and Andocides' status as *atimia* in consequence, see MacDowell (1967), 200–203. Lys. 6 does not mention the secondary accusations, concerning the suppliant's bough, at all, which is one of the disparities between the two speeches which complicates their relationship: see Todd (2007), 406. On the different procedures which could be used to bring a charge of impiety, see Dem. 22.27, with MacDowell (1978), 199.

<sup>639</sup> See Furley (1996) for a reconstruction of the events of 415; see Hansen (1976), 128–130 on the *endeixis* case details.

<sup>640</sup> Accepting its authenticity as an actual prosecution speech from the trial: Todd (2007), 408; Furley (1996), 104; MacDowell (1962), 14. See Todd (2007), 404 for a full catalogue of references on its authenticity, including earlier ones which considered the text a pamphlet.

<sup>641</sup> E.g. MacDowell (1962); Osborne (1985); Furley (1996); Bowden (2015).

laws, begun after the restoration of the democracy in 410 BCE and then restarted after the second democratic restoration in 403/2, Athenian legislative procedures changed.<sup>642</sup> Some laws were retained, such as for example those of Draco on homicide (see IG I<sup>3</sup> 104), while others were rejected and replaced with new laws. These changes took place, it appears, both because the laws' disarray raised concerns over inconsistencies in the law code and because the political upheavals of the preceding years had made a systematic plan of action with regards to amnesties, punishments and legal repercussions necessary.<sup>643</sup> In 403 the city then elected a board of *nomothetai* to enact new laws (Andoc. 1.81-89).<sup>644</sup> At the same time, they differentiated laws from decrees, the latter not allowed to supersede the former (Andoc. 1.87).<sup>645</sup>

The prosecution's speech against Andocides starts his discussion of law by comparing Andocides to the νόμοι πάτριοι of the city and judging Andocides himself incompatible with the ancestral laws (Lys. 6.8-9). The speaker goes then on to connect the gods and the laws, by quoting Pericles:

Yet Pericles, they say, advised you once that in dealing with impious persons you should enforce against them not only the written but also the unwritten laws (μὴ μόνον χρῆσθαι τοῖς γεγραμμένοις νόμοις περὶ αὐτῶν, ἀλλὰ καὶ τοῖς ἀγράφοις), according to which the Eumolpidae conduct their exegesis (καθ' οὓς Εὐμόλπιδαι ἐξηγοῦνται), and which no one has yet had the authority to abolish or the audacity to contradict (οὓς οὐδεὶς πω κύριος ἐγένετο καθελεῖν οὐδὲ ἐτόλμησεν ἀντειπεῖν),— and people do not even know who established them (οὐδὲ αὐτὸν τὸν θέντα ἴσασιν). For he judged that they would in this way pay the penalty, not merely to men, but also to the gods (Lys. 6.10).

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<sup>642</sup> Evidence comes from Lysias 30, the prosecution speech against Nicomachus, one of the *anagrapheis* commanded to republish the laws, and from Andoc. 1.83-84 – although the document proposing to be Teisamenus' decree should be disregarded as spurious: see Canevaro (2015), 24; Canevaro and Harris (2016), 33-47.

<sup>643</sup> Shear (2011), 238-245. The sacrificial calendar was also revised: see Lys. 30, with Todd (2000), 296-307; also Parker (1996), 43-55.

<sup>644</sup> On the changes in the late fifth century, see Canevaro (2015), 14-34. Cf. also Hansen (1999), 161-165.

<sup>645</sup> See Hansen (1999), 170-172. While the document citing this law at Andoc. 1.87 is most likely a forged later insertion (see Canevaro and Harris (2012), 116-119), the law's content is also quoted at Dem. 23.218, Dem. 24.30 and Hyp. 3.22 (though the speaker in the latter attributes the law to Solon).

This is the first explicit contrast of γεγραμμένοις νόμοις with ἀγράφοις.<sup>646</sup> The speaker here mentions a group of laws whose origin is unknown (οὐδὲ αὐτὸν τὸν θέντα ἴσασιν) and which carry such high authority that no one would dare contradict or abolish them. The speaker makes a number of further statements about these laws. First, they are unwritten. Anonymity is a mark distinguishing unwritten from written law, though uncertainty regarding origin also accompanies the homicide laws in Antiph. 1.3 and the homicide court in Dem. 23.70. *Agraphoi nomoi*, as discussed above, often appear to be divine. However, Renaud Gagné has recently argued the authority of unwritten law in this passage of Lys. 6 should be considered “a rhetorical stance, not a statement of fact”.<sup>647</sup> For our purpose the main issue is not whether these divine laws are unwritten, but that these laws are considered divine. Yet that this passage may be rhetorical is important, as it suggests yet again religious authority in Athens is not incontestable.

Second, the speaker specifies the Eumolpidae expound (ἐξηγοῦνται) according to these laws. The Eumolpidae were an Athenian family who, together with the Kerykes, were the hereditary priests of the Eleusinian Mysteries: the *hierophant* was selected always from the Eumolpidae.<sup>648</sup> What exactly the verb ἐξηγέομαι, to ‘interpret’ or ‘expound’, means in a religious context and a context of law is unclear. An ἐξηγητής is an expounder or interpreter, often of divine signs, though the action could also be attached to sacrifice: in the decree regarding the First Fruits at Eleusis (ca. 435 BCE) the Eumolpidae’s expounding concerns the offering of part of the wheat and barley of the First Fruits as a sacrificial cake (IG I<sup>3</sup> 78.36-37).<sup>649</sup> Third, the speaker claims Pericles recommends these laws be used to deal with impiety, together with written laws. Further in the speech, the speaker mentions a *hierophant* who gave advice to the city on how to deal with a Megarian man who had committed an act of impiety (Lys. 6.54). These unwritten

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<sup>646</sup> So Ostwald (2009 [1973]), 144.

<sup>647</sup> Gagné (2009), 226. If one reads the passage thus, the authority of these unwritten laws comes close to the authority of tradition, of *ta patria*, and of religious expertise – through the connection with the Eumolpids.

<sup>648</sup> See Clinton (1974), 10-22. Gagné (2009) questions the oft acknowledged implication that the Eumolpids were involved in prosecutions for impiety, taking the pseudo-Lysianic portrayal as rhetorical.

<sup>649</sup> At the time of this trial, the exegetes’ action appears to belong to the whole tribe of Eumolpidae, while later this is restricted to the *hierophant* himself: see Todd (2007), 448.



laws appear then to concern religious matters, as an authority regarding impiety, and through their connection to the Eumolpidae. Fourth, the speaker states that taking unwritten law into consideration in addition to its written counterpart means offenders “would in this way pay the penalty, not merely to men, but also to the gods”. These unwritten laws, related to the highest-ranking priesthood in one of the most important religious rites of Athens, which deal with impious transgressions, carry such authority that none can alter them. They are a tool by which transgressors pay penalty to the gods, and appear therefore to be presented as divine.<sup>650</sup>

The last remaining passage indicating divine legislation occurs in the first of two speeches *Against Aristogeiton*, preserved in the Demosthenic corpus (Dem. 25). Ostensibly delivered some time shortly before 323 BCE, *Against Aristogeiton* is a supporting speech in a public prosecution against Aristogeiton, where Lykourgos acted as main prosecutor (Dem. 25.1; Din. 2.13 mentions only Lykourgos’ role in reference to this trial, not any second speaker). Lykourgos and the speaker of Demosthenes 25 brought an *endeixis* against Aristogeiton as they accused him of exercising his citizen rights whilst being a state debtor (Dem. 25.9).<sup>651</sup> As part of a larger philosophical consideration of the importance of law and morality, the speech reads:

The whole life of men, Athenians, whether they live in a large state or a small one, is governed by nature and by the laws (φύσει καὶ νόμοις). Of these, nature is something irregular and peculiar to each individual; but the laws are universal, fixed, and the same for all. (...) The laws desire what is just and noble and beneficial (τὸ δίκαιον καὶ τὸ καλὸν καὶ τὸ συμφέρον); they seek it, and when they find it, they set it forth as a general command, equal and identical for all. The law is that which all men ought to obey for many reasons, but above all because every law is an invention and gift of the gods (πᾶς ἐστι νόμος εὖρημα μὲν καὶ δῶρον θεῶν), a principle of wise men (δῶγμα δ’ ἀνθρώπων

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<sup>650</sup> Cf. the idea that divine, unwritten laws include in themselves the punishment assigned to transgressors of these laws, expressed by Hippias in Xen. *Mem.* 4.4.24: those laws are “framed by a better legislator than man”.

<sup>651</sup> The accused was later also prosecuted for his role in the Harpalus affair of 323 BCE by Dinarchus, who in his plea similarly portrays Aristogeiton as someone well-known for insolence and impudence: a man ἀνόσιος (“impious”) (Din. 2.14), even “the worst character in the city, or rather, in the whole world” (ὁ γὰρ πονηρότατος τῶν ἐν τῇ πόλει, μᾶλλον δὲ καὶ τῶν ἄλλων ἀνθρώπων) (Din 2.1).

φρονίμων) a corrective of errors voluntary and involuntary, and a general covenant of the whole city (πόλεως δὲ συνθήκη κοινή), in accordance with which all men in that state ought to live (Dem. 25. 15-16).

While the laws are said to be δόγμα δ' ἀνθρώπων φρονίμων, “the judgement of wise men”, they are also divine in origin. The speaker declares the laws an invention of, and a gift from, the gods: εὔρημα μὲν καὶ δῶρον θεῶν. The speaker therefore assigns to the gods an explicitly creative role in the construction of laws. Not only did they invent these rules, they also gifted them to humanity.

This description of law as invention and gift of the gods was taken up as a Demosthenic definition of law already in Roman times (see for example Justinian's *Digest* 1.3.2) and still is widely quoted unquestioningly in more general works on topics of ancient law and religion.<sup>652</sup> This is a peculiarly strong and direct statement on the connection between the laws and the gods, further illustrative of the speech's peculiarity. The whole speech is after all remarkable for its idiosyncrasy, most of all in its treatment of religion. Its authorship and its genuineness as a fourth-century speech has long been questioned and – despite a recent defence by Gunther Martin – should be rejected on the basis of historical and factual inaccuracies, as well as stylistic unconventionalities, atypical word choice and unusual, irrelevant content.<sup>653</sup> Martin's attitude to the speech exemplifies a reluctance to dismiss any material definitively as spurious, even in the face of compelling evidence, when that material is of particular interest.<sup>654</sup> In his monograph, he himself meticulously analyses the speech, in particular its religious content,

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<sup>652</sup> See, for example, Fletcher (2012), 107; Brague (2007), 21; Willey (2016), 178 (although the latter at least acknowledges the uncertainty of its authenticity).

<sup>653</sup> Dionysius of Halicarnassus was the first to judge the speech as un-Demosthenic (Dion. Hal. *Dem.* 57). On factual inaccuracy and anachronisms in the speech, see, for example, Sealey (1993), 238-239. On stylistic elements and prose rhythm, see, for example, Blass (1887), 408-418 and further the discussion of scholarship in Martin (2009), 184-190. Mikalson (1983), 29 considers it a late forgery.

<sup>654</sup> Despite the serious doubt about authenticity, the speeches (or documents inserted into them) continue to serve as evidence for many scholars: regarding Dem. 25, see, for example, Dover (1974), 9, who is uncertain about the origin and nature of the speech yet uses it in a manner similar to all other speeches (eg. 255, 264). Mikalson (2016), 38, 260 makes use of the speech as a source of evidence too, though for minor arguments, despite recognising it as a forgery in Mikalson (1983), 29. Both the editions of Mathieu (1947), 129-138 and López Eire (1985), 221-222 claim it is Demosthenic.

discussing arguments which he recognises “justify suspicions about the speech being composed in the period in which it purports to belong”.<sup>655</sup> He acknowledges no final conclusion on the issue can be reached with absolute certainty, though proceeds to argue as if a lack of conclusiveness makes every possible scenario *equally* likely, which is a false line of reasoning.<sup>656</sup> He ultimately proclaims, “Demosthenic authorship is more likely than not” – a conclusion which appears surprising and contradictory to his own preceding analysis and argumentation.<sup>657</sup> Although rejecting the oration as an un-Demosthenic and post-classical creation means losing one of the most fascinating and unusual depictions of religious ideas in oratorical texts, the evidence is too compelling not to. Nonetheless, despite its inauthenticity, the passage’s recognition of multiple sources of authority for the origin of law is consonant with the picture emerging here from oratory in general: law is largely legitimated by human knowledge and reason, but a connection with the divine remains a possibility.<sup>658</sup>

In conclusion, dismissing Demosthenes 25 leaves only the three passages from Demosthenes 23, Antiphon 1 and Lysias 6 as direct evidence in oratory for law-making gods. These speeches assign divine agency to different elements linked to the legislative process: one concerns actual written law, the second addresses the unwritten customs of a court of law, the last sees the hand of the divine in the unwritten laws employed alongside man-made written ones. In oratory, in contrast to other genres of literature, divine legislation is clearly not the norm for conceptualising the law. Nonetheless, it is in certain cases possible for orators to attribute laws to gods, even if tentatively, as well as in collaboration with human agents. This demonstrates the notion is at least not inconceivable or unbelievable – as the plentiful evidence for law-making gods in other genres of text such as tragedy and philosophical works also would suggest. Evidently there is some degree of flexibility or uncertainty concerning the discourse

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<sup>655</sup> Martin (2009), 184. He devotes 20 pages to discussing the speech’s authenticity (182-202).

<sup>656</sup> Martin implies this when arguing, “as none of these explanations can claim to be satisfactory (let alone inevitable), we must take the possibility seriously that Demosthenes wrote the speech for use in court” (2009), 200.

<sup>657</sup> Martin (2009), 187, n.178.

<sup>658</sup> So Harris (2004), 27. His treatment exemplifies how the passage is taken as authoritative for Greek law generally. While not authentic, it does converge with philosophical and literary discourses on law’s origins.

of the origin of law. It is now possible to tease out consequences for understanding both how law is conceptualised in oratory and how this relates to other evidence for the conceived relationship between law and the divine. The next section will do so by comparing these ‘divine law references’ with the conventional portrayal of legislation in oratory, which centres on the lawgiver.

### ***Conclusion: the conceptualisation of law***

First, of the three passages which reference divine legislation, one relates to the Eleusinian Mysteries, while two concern homicide. This strongly suggests the references to the gods are there because the subject matter is seen as particularly solemn. The Mysteries and the Areopagus are generally discussed in Athens in more lofty terms than most other religious matters.<sup>659</sup> Homicide, which was tried at the Areopagus court, is an offence with significant religious overtones, even if not explicitly a religious offence like ἀσέβεια or ιεροσυλία. The established divine aetiology of the Areopagus court demonstrates the Greeks considered the consequences of murder as a matter of particular interest to the gods.<sup>660</sup> Furthermore, the fact that homicide law is often attributed to Draco also contributes to the possible conceptualisation of homicide law as divine. This may seem paradoxical at first glance: homicide is one of the few crimes for which the laws are attributed to a specific, particular author, and Draco is very much considered a human legislator. However, its attribution to Draco makes homicide law also one of the oldest pieces of legislation known in Athens. As such, homicide law is considered particularly long-established and, importantly, unchanging and unchangeable. To attribute divine origin to a law, it is necessary for the law to be both old and immutable: no humans could

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<sup>659</sup> Gagné (2009), 217 has shown how almost all the evidence for impiety accusations and trials related in some ways to the Mysteries, suggesting a close connection between *asebeia* and the Mysteries. The nature of the Eleusinian cults seems to have contributed to this: as mystery cults they were shrouded in secrecy, they carried a sense of solemnity resulting from Demeter and Kore’s connections to life and death, and participated in a “staging of fear” through the many memorialisations of transgressors and their punishments both at the sanctuary in Eleusis and around the Eleusinion in Athens.

<sup>660</sup> Cf. Willey (2016), 183. Though matters concerning impious behaviour are not necessarily the gods’ only interest in human legal affairs: contra Mikalson (1983), 28.

be authorised to change law enforced by the gods. (Hannah Willey’s argument that the messiness of human affairs, to which the laws must apply, might offer an explanation for the portrayal of legislation as a human, rather than divine, enterprise, suggests a similar practical incongruence between law and the divine, but from a different angle.)<sup>661</sup> This proposal of a correlation between unchangeability and divine attribution finds support in the ‘divine law passages’ all accenting the unchanging nature of law. In Demosthenes’ *Against Aristocrates*, the νόμιμα attributed partly to the divine are also said to be νομίμως, ‘customary’ or ‘established’: the speaker argues these customs cannot be changed by anyone, as no one has the power (κύριος) to do so (Dem. 23.69). In Antiphon’s *Against the Stepmother*, the orator states the laws which come from the gods and ancestors allows the judges to convict people in the same way as has always been done in the past (Antiph. 1.3). Moreover, the speaker of *Against Andocides* makes clear the unwritten laws, with unknown origins, may not be abolished or contradicted by anyone (Lys.6.10). In all three of these passages, the immutability of law sees emphasis.

Importantly, the correlation between unchangeability and divine origin is not a causal relationship which functions both ways. To be considered divine, law must be unchangeable, but to be unchangeable, law does not have to be divine. The immutability of law is just as much part of the discourse assigning legislation to the ancient *nomothetes* – Solon most of all. In oratory, the discourse of legislation frequently attributes law to the ‘lawgiver’, often making claims about a lawgiver’s intention behind the legislation. Canevaro has underlined how the issue of legal change also impacts on this tradition of the lawgiver. The instigation of a board of *nomothetai* in 403 BCE constituted not only a political and legal change but also a break with earlier tradition for the notion of legal change and innovation: in archaic Athens, the laws of Draco (see Dem. 23.62) and Solon (suggested by later traditions: Hdt. 1.29; *Ath. Pol.* 7.2; Plut. *Sol.* 25) appear to have had entrenchment clauses, stopping anyone from changing them.<sup>662</sup> Such clauses appear in other early law codes across the ancient world, which similarly attempted to

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<sup>661</sup> Willey (2016), 180.

<sup>662</sup> On the entrenchment clause in Draco’s law in Dem. 23, see Canevaro (2013), 71–73.

secure the immutability of the law.<sup>663</sup> Of course, this did not mean that laws in archaic societies did not actually change, merely that there was no discourse which allowed for explicit recognition of such change.<sup>664</sup> With the *nomothetai*, however, law could explicitly transform. Canevaro has argued, “viewing the laws as the product of Solon’s individual achievement implies first and foremost an institutionalized understanding that laws should not be changed.”<sup>665</sup> In other words, the frequent ascription of laws to ancient lawgivers was one way of continuing the portrayal of law as old and constant – despite the new legislative reality of fourth-century Athens. Taking Canevaro’s recognition of the importance of immutability further, one can link the passages regarding divine law, which in their portrait of law similarly highlight its fixed and permanent nature.

In fact, there are a number of other matters in which the ‘divine law passages’ demonstrate similar mechanisms at work as the conventional portrayal of the origin of law through the ancient *nomothetai*. In both discourses, the authority of law places it at a remove from the immediate context of the speech, the speaker and his audience: it is not the *demos* which legislates, but a different – and implicitly higher – authority, namely the ancient lawgiver, heroes or gods. This contributes to a presentation of the law which preserves distance between the law itself and those applying it. This distance in turn allows the orator to make freer use of the law. We have seen that speakers draw on the intention of the lawgiver, as an attempt to decipher the will which resides behind the lawgiver’s actions. This technique allows for, even calls for, an act of interpretation. By referring to the intention of the lawgiver, the speaker is relying not only on the authority of the lawgiver figure, possibly Solon, but also his own authority as interpreter, inferring from the laws the motivation behind them. Of course, these interpretations are not very daring. They do not expound particularly unusual sentiments but mostly reference traditional values, being cautious, or offering feasible readings of specific

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<sup>663</sup> See, for example, the story of the Locrians, who can only suggest a new law with a noose around their neck (Dem. 24.139).

<sup>664</sup> Cf. Harris (2006), 6-14; Canevaro (2015), 1-7.

<sup>665</sup> Canevaro (2015), 10.

laws.<sup>666</sup> In one of the three ‘divine law passages’, the speaker similarly draws on the legislator to make a statement regarding the purpose of a rule (here a *nomima*, not *nomos*): In Demosthenes’ *Against Aristocrates*, Euthycles seeks to explain why defendants in the Areopagus court have freer mandates to withdraw from their case after the first speech:

“Now why is that so, men of Athens? Because they who originally ordained these customs, whoever they were, heroes or gods, (οἵτινές ποτ’ ἦσαν, εἴθ’ ἥρωες εἴτε θεοί) did not inflict a penalty on misfortune, but humanely (ἄνθρωπίνως) alleviated its calamities, so far as they honestly could” (Dem. 23.70).

The intention behind this *nomima* is reportedly the alleviation of misfortunes “humanely”, ie. gently.<sup>667</sup> Euthycles makes this claim to substantiate his assertion of the righteousness of the Areopagus’ rules, which he alleges his opponent’s actions have placed in danger. Both laws which come from a *nomothetes* and those from a deity can be presented then as authoritative in such a way that the speaker can creatively interpret the motivation which lies behind such rules.

The portrayal of divine laws and laws attributed to the ancient legislator equally allow space for interpretation. In this way, the process of citing laws is to an extent made similar to the process of citing divine signs. Both are after all the interpretation of a figure’s will through a secondary source: with divination, a divine sign; with the lawgiver, the laws themselves. Of course, laws are frequently cited without any mention of the lawgiver. There are many ways of quoting and employing laws. Yet when a lawgiver is mentioned, the relationship between source and origin of source is comparable in some ways to the way in which authority functions with regard to divine signs. Chapter Two has demonstrated how speakers quote oracles in the law courts as sources of authority very similar to laws: these divine signs are general commands, applied to the specific situation to make a claim about the speaker’s opponent,

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<sup>666</sup> As Todd (2007), 448 says, “statements about the intent of lawgivers appear based on generalisation and inference rather than anything else”.

<sup>667</sup> The adverb can also mean ‘with a view to humans’ or ‘in a human manner’. The use of this word to describe the intention of the “heroes or gods” who established these regulations is remarkable, and demonstrates the way in which the divine and the human are intertwined in the process of law-making: cf. Willey (2016), 188.

whose actions is placed against the facts the divine sign evidences. The divine sign does not make a claim regarding divine will. One passage where such a claim is made in a speech, however, is in Aeschines' *Against Ktesiphon*. In his retelling of the Fourth Sacred War (Aeschin. 3.107-130), Aeschines disapproves of Athens' reluctance to participate in the penalizing of the Amphissians for their misdemeanours. He claims, "it was to us that the gods had offered the leadership in the deed of piety, but Demosthenes' taking of bribes had prevented us" (129). As proof this was the gods' opinion on the matter, he presents a divine sign: "But did not the gods forewarn (προύλεγον) us, did they not admonish us, to be on our guard, all but speaking with human voice? (...) Was not that sign (σημεῖον) sufficient which appeared at the Mysteries—the death of the celebrants?" (130). The speaker makes a claim about divine will and substantiates it through divine signs. Compared to the appeal to laws and legislators, there is a reversal here: while divine signs are employed to interpret the gods' will, the lawgiver is used to interpret the laws. The ultimate source of authority and the instrument used to interpret it are thus reversed. The authority invested in gods and the authority of law evidently differs in many ways, but the way in which appeals to these authorities function show parallels.

Having demonstrated the discourse of divine legitimacy of law functions in some ways similarly to the more frequently referenced discourse of the nomothetic tradition (through a focus on the immutability of law, its higher authority and the space it awards the speaker for interpretation), we return to the question of how the 'divine law passages' should be understood. Should the passages suggesting divine law be seen as exceptional, unorthodox oddities, as implied by the reluctance of legal scholars to analyse these seriously? Better would be to understand these passages not as going against the grain of the fundamental conception of the rule of law, as an authority constructed by the *demos* for the *demos*, but rather as expressing a notion of divine law compatible with the discourse of human law-making. Just as the nomothetic tradition of the lawgiver, with its portrayal of unchanging law, nonetheless fits with the legislative reality of fourth-century Athens and its *nomothesia* (also present in the oratory of the law courts, particularly in cases of *graphe paranomon*), so too the discourse of divine law operates alongside the portrayal of Athenian law as largely Solonic and alongside



exclamations locating the strength of law in the *demos* (as in Dem. 21.224-225). The three passages discussed all suggest multiple sources of authority for law: they combine human and divine agency in their conceptualisation of the legislative process, either by attributing the authorship of laws or legal regulations directly to gods and mortals alike, or by suggesting divine unwritten laws function alongside human laws. This multi-dependency on different types of authority illustrated here exemplifies the way the Athenian judicial system worked more broadly. The previous chapter already showed how the employment of oath-swearing and curses combined a reliance on divine punishment with complementary and supplementary human punitive measures. Likewise, the assignation of law as divine acted as a mechanism by which divine and legal forces were combined for the enforcement of society's norms. The discourse on the origin of law thus betrays the functional relationship between religion and law more generally. They cannot be separated out completely, revealing a more integrated connection.

Taking the notion of divine law as expressed in oratory seriously and considering it compatible with the conventional portrayal of legislation in the Assembly and the law courts, this chapter must still pursue why the gods are so seldom connected explicitly to law-making, and why precisely they are invoked at certain times. As mentioned above, divine law is evidently mentioned in situations of particularly religious significance. This continues the tendency, observed in the previous chapter, that oaths, especially informal ones, are often sworn as an emphatic tool, in moments of heightened importance. Religious elements clearly are linked to 'significance' somehow, but what does this mean analytically? Are the gods only mentioned in 'significant' settings because they are thought to be concerned exclusively with those settings? Are only homicide laws and regulations connected to the Mysteries presented as divine because only these are divine? This does not seem plausible. If these references to divine law are merely expedient ways of highlighting the importance of what the speaker says, why are such statements not employed more regularly? Or is divine law only mentioned in discussion of these significant, solemn subjects because it would only then be seen as 'appropriate' to do so?

We will return to these questions after moving on from the origin of law to its enforcement, analysing in the next section the evidence for actions of the gods.

### **5.3 The enforcement of law: parallel authorities**

There is more than one way the laws of a society could be conceptualised as divine: not only through the involvement of gods at its point of creation – the legislative stage – , but also at the stage of enforcement, if divinity is seen as a property, or a quality, which law is awarded through concurrence.<sup>668</sup> The inscribed laws and decrees of the Athenians and their invocation of *theoi* already indicated the gods are guarantors of the laws. This next section considers the conceived role of the divine in the *enforcement* of law, at points further along the judicial process than the legislative stage. In deliberative and forensic speeches, Athenians' claims present the gods as influencing the deliberative and judicial process. The rhetorical value of these statements is in all cases obvious, and here – as with so many of the religious elements discussed in this thesis – the rarity of such statements is noteworthy. However, infrequency does not necessarily suggest insignificance. Rather, this lower frequency should itself be taken seriously – an attribute perhaps as meaningful to the understanding of these passages as their actual content.

#### ***Divine intervention***

In his speech *Against Leokrates*, Lykourgos recounts a few of the ways in which the gods reportedly impact the decision-making process of the courts. First, gods can exert influence on litigants, particularly the person standing trial. Lykourgos says of his opponent, Leokrates:

As for his return here [to Athens], I think that some god brought him back for this punishment (οἶμαι θεόν τινα αὐτὸν ἐπ' αὐτὴν ἀγαγεῖν τὴν τιμωρίαν), so that after

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<sup>668</sup> Cf. Brague (2007), 1 on different ways the notion of divine law can be understood.

fleeing from an honourable danger, he might meet an inglorious and shameful death and he might come as a subject before those he betrayed. If misfortune had befallen him anywhere else, it would not be clear that this is the crime for which he is being punished, but here, among those he has betrayed, it is evident that he suffers this retribution because of his transgressions against the law. For the first thing gods do to evil men is to lead their minds astray (Lyc. 1.91-92).

Lykourgos' motivation for making this statement about divine influence becomes apparent in what he says next, following up this quotation of poetry with the story of Kallistratos' oracle, already discussed in depth in Chapter Two. The exiled Kallistratos returned to Athens upon the instruction of an oracle, after which the city awarded him a death sentence for his crimes – deservedly so, according to Lykourgos, who sees in both Kallistratos' and Leokrates' Athenian homecomings a divine deed: "thus the god too acted rightly in allowing those who had been wronged to punish the offender" (93). The gods here do not themselves deliver punishment to transgressors, but facilitate the human process of punishment through trial and judicial judgement.<sup>669</sup> The role of the gods is therefore supporting: rather than acting as judges themselves, they exert limited influence by enabling the court to pursue justice. Significantly, this implies divine endorsement of human law. Further, Lykourgos' argument has a dual function: it serves as pre-emptive counterargument to Leokrates' defensive reasoning that he lacked criminal intent, being ignorant his departure from Athens at a time of crisis would be interpreted as an act of treason, an argument he had apparently made before. Lykourgos announces, "Yet he contended that he would not have faced this trial if he had been conscious of committing a crime like this." (90). More broadly, this portrayal of the gods as transporters of criminals, as the metaphorical (or not so metaphorical) wind behind their sails, also validates the authority of the Athenian legislative procedure, as it implies that standing trial will automatically result in the achievement of justice: the decision of the judges is thereby equated with justice. This kind of argument carries with it implications for the role of the prosecutor

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<sup>669</sup> Cf. also Din. 3.14, where "the gods expose traitors and hand them over to you for punishment". Note also Dem. 4.42, where Demosthenes suggests, "some god, out of very shame for the conduct of our city, had inspired Philip with this restlessness", but argues this is in fact an act of assistance to the Athenians by the god.

too. This is made explicit in another instance of this *topos*, found in the pseudo-Lysianic *Against Andocides*. Here again the defendant's actions are explained as consequence of the fact "a god destroyed his reason" (Lys. 6.22: θεῶν τις τὴν τούτου γνώμην διέφθειρεν). The speaker holds:

He [Andocides] has made it clear to the Greeks that he does not acknowledge (οὐ νομίζει) the gods. He took to ship-owning, and went sailing on the sea, not because he was afraid of what had been done but because he was audacious. However, the deity was leading him (ὁ δὲ θεὸς ὑπῆγεν αὐτόν), so that he might return to his misdeeds and pay the penalty at my instigation (ἐπὶ τῇ ἐμῇ προφάσει) (Lys. 6.19).<sup>670</sup>

Here, a deity is responsible for the defendant's return to Athens. However, this time the dispensation of judgement, which the gods support through their action, is assigned explicitly to the prosecutor, not just the law courts in general. The speaker implies he himself serves as an agent employed by the deity to obtain justice.<sup>671</sup> This is the sentiment also expressed in the prayer with which Lykourgos opens his prosecution of Leokrates: he asks the gods to make him a worthy accuser of Leokrates' crimes, unless the latter is innocent – in which case he prays the gods and judges will save the defendant from danger (Lyc. 1.1-2).

Not only are the gods said to direct people's movements, especially returns from exiles, but their influence can also affect these voyages themselves – in particular sea journeys, as Andocides' prosecutor above indicates. Andocides is more explicit in his refutation of these arguments in his defence speech *On the Mysteries*:

We are asked to believe that the only object of the gods in saving me from the dangers of the sea was, apparently, to let Cephisius put an end to me when I reached Athens. No, gentlemen. I for one cannot believe that if the gods considered me guilty of an offence against them, they would have been disposed to spare me when they had me in

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<sup>670</sup> On the translation of the phrase (οὐ) νομίζειν τοὺς θεοὺς, which is also used in the indictment of Socrates, see Versnel (2011), 539-559 and Giordano-Zecharya (2005).

<sup>671</sup> The reading ἐπὶ τῇ ἐμῇ προφάσει has been called into question: the suggested translation of LSJ s.v. II.2 of "a propos of me", or "at my instigation", is questioned by Todd (2007), 454, who thinks instigation of the trial could only be claimed by the main prosecutor, Cephisius, not the secondary speaker of this speech. Considering the speech's hyperbole and its attacking tone, I do not think this slight exaggeration of the speaker's own role would be out of place.

a situation of the utmost peril—for when is man in greater peril than on a winter sea-passage? Are we to suppose that the gods had my person at their mercy on just such a voyage, that they had my life and my goods in their power, and that in spite of it they kept me safe? Why, could they not have caused even my corpse to be denied due burial? (Andoc. 1.137-138).

Journeys at sea are portrayed here as situations over which the gods exert control. Specific gods are not mentioned, though traditionally Poseidon especially possessed the power to raise and quell storms.<sup>672</sup> After arguing, “it is not conceivable that the gods saved me from perils of that nature, only to let themselves be championed by Cephisius, the biggest scoundrel in Athens” (139), Andocides states:

To me the dangers of a trial like the present are to be considered the work of men, and the dangers of the sea as the work of the gods (τοὺς δὲ κατὰ θάλατταν θείους). So if it is necessary to speculate about the gods (εἴπερ οὖν δεῖ τὰ τῶν θεῶν ὑπονοεῖν), I think indeed that they would be angry and displeased if they saw those whom they had themselves saved brought to destruction by mortal men. (Andoc. 1.139).

Andocides objects his trial is a (divinely plotted) punishment. Instead, he argues legal trials are ordeals created by men and appearances in court are therefore not indicative of divine will, unlike the experience of seafaring, where survival or destruction can be read exactly as expressive of such godly will. In turn, his opponent in *Against Andocides* attempts to fend off this reasoning by reminding listeners, “the deity does not punish immediately”, that sometimes punishment may only reach the descendants of offenders. Yet,

“in the meantime the deity sends upon the wrongdoers many terrors and dangers, so that many men before now have desired that their end had come and relieved them of their troubles by death. At length, it is only when he has utterly blasted this life of theirs that the deity has closed it in death.” (Lys. 6.20).

Evidently, arguments of divine intervention can be employed to argue both sides of a case.

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<sup>672</sup> Cf. Parker (2007), 410.

We find the reasoning of safe completion of a sea voyage is both thanks to, and demonstrative of, the goodwill of the gods, elsewhere too: implied in Demosthenes' *Against Zenothemis* ("the ship was safely brought to Cephallenia, thanks chiefly to the gods, and after them to the bravery of the seamen": Dem. 32.8) and also in Antiphon's speech *On the Murder of Herodes*. Here the speaker Euxitheus avers people who carry pollution (*miasma*) bring destruction and disaster to the ships they board (Antiph. 5.82).<sup>673</sup> He specifies, "fellow-passengers of mine enjoyed the calmest of voyages", which "furnishes the strongest presumption in my favour that the charge brought against me by the prosecution is unfounded" (Antiph. 5.83). Euxitheus adduces this discussion of the sea as part of his declaration that signs from the gods (τοῖς ἀπὸ τῶν θεῶν σημείοις) should be considered evidence for the judges in their verdict (Antiph. 5.81). Aside from one's prosperity or misfortune at sea, signs from the gods can also be detected in the effect one has on sacrifices attended (82). This statement brings into play shared notions of religious practice, and in his appeal to the audience to take these into consideration in his own case, Euxitheus asserts such signs should be employed in private decision-making, just like they already are in affairs of state (82).<sup>674</sup>

The connection between seafaring and the divine could be exploited in a number of different ways: survival on the sea can be a sign of divine will, and also itself proof of guilt or innocence. Underlying all the different applications of this idea is the conviction that the gods are concerned with the punishment of wrongdoing, and that they can punish those who they consider to have committed wrongdoing.<sup>675</sup> Speakers apply this notion to their particular argumentation in the way that suits them best. The portrayal of variable outcomes of seafaring as divine signs, just like the outcomes of a sacrifice, helps us understand why seafaring is presented in oratory as an arena where divine involvement in human affairs is particularly pronounced. The idea that the plight of ships and voyages on the sea express divine will is a

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<sup>673</sup> The idea that gods punish transgressors at sea suggests divine injustice, as innocent fellow-passengers can be caught up in the suffering, as lamented in Aesch. *Sept.* 602-620.

<sup>674</sup> Gagarin (1989b), 112 disregards the speech's religious argumentation as peripheral; Edwards (2009), 421-423 entertains the possibility they could be meaningful.

<sup>675</sup> Cf. Mikalson (1987), 107.

transcultural notion – found also in the biblical story of Jonah and the fish, the use of floods as expressions of divine displeasure, or traditions of throwing men overboard during storms as a way of removing possible impurity or guilt. The connection between the sea and the divine can be understood by looking at the sea’s physicality: an unknown entity, wildly unpredictable and savage. Travelling across the sea was risky, and therefore the main concern of sea travel was safety. Bowden and Eidinow have demonstrated the role of risk in the shaping of religious belief and actions.<sup>676</sup> The gods were active in many spheres of activity which held high risk, either because of their vital importance or because the dangers were difficult to predict: in the first category one could place agriculture, in the second warfare.<sup>677</sup> The notion that the sea is a domain of the gods, where they can express their displeasure or pleasure with humans, functions as a coping mechanism for the unpredictability of death and disaster at sea.

The gods exert not only influence over the judicial process by effecting litigants’ thoughts and actions, deities can secondly impact the judges too. Lykourgos makes the argument that judges who do not deliver justice will be punished by the gods:

It remains for you, as a service to yourselves and the gods (ὕπερ ὑμῶν καὶ ὑπὲρ τῶν θεῶν) to take vengeance on Leokrates (τιμωρήσασθαι Λεωκράτην). For while crimes remain untried the guilt rests with those who committed them, but once the trial has taken place it falls on all who did not mete out justice. Do not forget, gentlemen, that each of you now, though giving his vote in secret, will openly proclaim his attitude to the gods (φανερὰν ποιήσει τὴν αὐτοῦ διάνοιαν τοῖς θεοῖς) (Lyc. 1.146).

Playing on fear of the gods, Lykourgos suggests guilt can fall on judges who do not make a just judgement. This transfer of guilt from defendant to judge corresponds to the common Athenian practice of punishing those who do not implement decisions in their turn.<sup>678</sup> This is seen too in the regulations for homicide, which contain an extra requirement that successful defendants had to swear: “those judges who have voted on his side have voted what is true and right, and

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<sup>676</sup> Eidinow (2007); Bowden (2005).

<sup>677</sup> Bowden (2005), 10-11.

<sup>678</sup> E.g. the Amphictyonic oath (CID IV.1)

that he himself has spoken no falsehood; and he calls down destruction upon himself and his household, if this be not true, and prays for many blessings for the judges” (Aeschin. 2.87).<sup>679</sup> The judges deliver their verdict hoping not to “expose himself to the vengeance of the gods (τῇ παρὰ τῶν θεῶν τιμωρίᾳ)” (Lyc. 1.148). That it is possible to make such arguments helps explain Lykourgos’ ability to declare:

“It is my belief, gentlemen, that the guidance of the gods (τὴν τῶν θεῶν ἐπιμέλειαν) presides over all human affairs and more especially, as is to be expected, over our reverence towards our parents, towards the dead and towards the gods themselves” (μάλιστα δὲ τὴν περὶ τοὺς γονέας καὶ τοὺς τετελευτηκότας καὶ τὴν πρὸς αὐτοὺς εὐσέβειαν) (Lyc. 1.94).

The gods are presented as intervening in matters of law by ensuring its enforcement through the human judicial process of law courts. Their concern for the law only makes itself felt as a corrective, when the law is broken. The argument that gods also could take matters in their own hands and punish offenders at sea accords with a society where so much of the seemingly unexplainable is attributed to expressions of the gods’ desires and wishes. In a way, law is presented as a human entity, though subject to divine checks and balances: just as oath-swearing incorporates the element of divine punishment not as an alternative, but an addition to human-administrated punishment, so direct intervention is a supplemental check on the judicial process to ensure divine will, which in oratory is taken as synonymous for justice.<sup>680</sup> The belief that gods can influence both defendants and prosecutors, leading the first to their trial and inspiring the second in their prosecution, underscores the importance of law: even when the gods must intervene, they do so by making use of the existing judicial process instigated by humans, through the law courts. Law is therefore turned into a tool of the gods. As our sources are orations delivered in a law court, the centrality awarded to human law enforcement procedures should occasion no surprise.

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<sup>679</sup> Cf. Parker (2005a), 103.

<sup>680</sup> On the relation between *nomos* and justice, see Carey (1996a), 41; Harris (2013a), 112-113.



## *Conclusion*

That the origin and portrayal of law appear different in oratory than literary texts and philosophical treatises has caused small wonder, for this difference matches a widely accepted distinction between the religious discourse found in oratory and that in other genres of evidence. As most famously expressed in Robert Parker's comparison of gods 'cruel and kind', the deities of tragedians or poets are not the deities of the orators. Different theologies emerge. In oratory a civic religious discourse manifests itself, one characterised by a never-ending optimistic perspective, free of criticism of the gods and full of praise for them, albeit lacking in specificities and speculation about these gods. It is an "opaque" theology of "easy moralism and, one must suppose, conventional piety".<sup>681</sup> By contrast, tragic theology is founded on transparency: it discusses individual gods and explicates humans' personal relationships with deities. It searches, if not always successfully, for explanations of human misfortune, displaying the suffering afflicted on humans by punishing gods.<sup>682</sup> Some of the characteristics of oratory's civic theology can be understood, with Parker, as a consequence of the very nature of public speech: however free a society, certain notions might be "thinkable" yet are in no way speakable.<sup>683</sup> The gods are nearly always on Athens' side, for instance.<sup>684</sup> However, some elements are not so easily explained: an example Parker observes, discussed earlier in Chapter Three, is the lack of references to dreaming as prophecy.<sup>685</sup> However, as Parker demonstrates, crucially, the differences between the representation of the divine and its impact on human society in oratory and in literary sources are not irreconcilable. The analysis in this chapter of diverse conceptualisations of the law's origin across oratory has demonstrated this too.

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<sup>681</sup> Parker (1997), 154, 158.

<sup>682</sup> Parker (1997), esp. 145-155.

<sup>683</sup> Parker (2007), 157.

<sup>684</sup> As Carey (1999), 373-374 points out too.

<sup>685</sup> Parker (1997), 157.

Like references to divine law, as shown in this chapter's first section, instances of divine intervention are rare in Attic oratory. *Nomoi* are mostly presented as human creations which rule human affairs, administered by the judges representing Athens' *demos*. The occasional passages where a speaker explicitly assigns agency in the legislative or judicial process to gods thus align more closely to the theology found in tragedy, literature and philosophical discourses, where the gods are often active in realising justice, as already surveyed. This correspondence with a discourse widely attested in Greek culture is important to remember, as it guards against an all too easy dismissal of oratory's references to divine agency as idiosyncratic expressions of individual orators' strong religious ideas or 'religiously fanatical' opinions, as has been said of Lykourgos' speech and the oration *Against Andocides*, respectively.<sup>686</sup>

Evidently, speakers bring the gods into a speech in hopes it will help their case. As Andocides and his prosecutor show, the same ideas can be employed in different ways to create opposite arguments which work in one's favour: standing trial can be a tool for the gods' punishment, evidence of guilt, or it can contrastingly represent a human ordeal, as with the sea, a platform for the gods' expression of favour. Yet the rhetorical use of such arguments does not mean they can be seen as merely expedient, as generic or simply claims advanced which could be twisted any way depending on one's case. If this were so, such arguments would appear much more frequently.<sup>687</sup> This line of inquiry returns us to the question of why statements concerning the gods seem so rare. First, it is necessary to recognise the nature of such statements: religiously authoritative claims. In the first type of passages examined in this chapter, speakers introduce law as a source of authority explicitly assigned with a divine origin, while speakers of the second kind advance a claim about divine action which amounts to a pretension of religious

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<sup>686</sup> E.g. Missiou (1992), 53; Dover (1968), 80.

<sup>687</sup> Cf. Eidinow (2015), 64, who makes a similar argument in her discussion of the notion of all-seeing gods, questioning the idea such statements are used by the orators simply when expedient since one would expect to see them more often if so.

authority for the speaker himself, implying the speaker has knowledge of the will of the gods. What allows a speaker to make such religiously authoritative claims in the first place?

Two points can be made here. The first concerns subject matter. We see the same type of trials, and even the same speeches, appear in our evidence in this second section regarding divine intervention, as we did with regard to law-making gods above. The evidence for divine law comes from two orations concerning the Areopagus – one dealing with homicide (Antiph. 1), the other the Areopagus' homicide regulations (Dem. 23) – and one speech concerned with impiety and the Eleusinian Mysteries (Lys. 6). As for divine action, five speeches provided evidence: two orations from this same impiety trial (Lys. 6 and Andoc. 1), one homicide speech (though not delivered at the Areopagus, the speaker argues it should have been: Antiph. 5), one oration of treason (Lys. 1, which explicitly references and praises the Areopagus court), and one speech from a *paragraphe* concerning the loan of money (Dem. 32). With the exception of the last, which in passing references the power of the gods over sea journeys, all these speeches concern the Areopagus court, the religious offence of impiety, or in the case of Lykourgos' speech, treason – which Lykourgos adamantly portrays as a religious offence. It is no coincidence that most of this evidence occurs in trials with clear religious connections, although it is important to recognise this was not the case with the speeches discussed in Chapters Two and Three, which quote oracles and dreams. One explanation for this distribution may be that oracles and dreams – as signs resulting from divination – are obviously and indisputably sources of religious authority; in quoting them, speakers do not claim they are divine. The types of religious statements examined in this chapter are different: here the speaker himself asserts a particular law is divine in origin, or that a particular deed should be interpreted as a sign from the gods.

This leads us to the second point. As reviewed in the previous chapter, the contours and limitations of the religious discourses expressed in oratory, as well as the relative infrequency of references, has traditionally been explained by 'appropriateness'. Accordingly, it was not appropriate to invoke the gods, or use extremely strong religious language as insults, for

example, when covering less elevated topics, particularly in private cases.<sup>688</sup> Likewise, it was not appropriate to express less than positive and optimistic views about the gods and their relationship to Athens, to the city's democracy, and to justice.<sup>689</sup> The reason for this latter limitation seems more easily understandable than the former, which apparently implies either the audience would be offended, or the gods would somehow only take interest in matters explicitly religious, or 'elevated' in another way. Mikalson offers the same suggestion, declaring, "it would appear that the gods became directly involved in legal affairs only when those affairs concerned (1) acts which were considered impious and (2) perjury."<sup>690</sup> However, the rarity of such religious statements, as already outlined, should not be understood as evidence for the limited fields involving the god. Mikalson's declaration not only ignores the few instances which connect the gods with legislation, but also, with regard to the enforcement of law, only considers the occasions when the gods are summoned for intervention. This does not mean deities were not deemed *capable* of intervening in other ways, or even *willing* to do so. Lykourgos' speech suggests the gods see everything. Law is presented in the main as a human affair not because people thought it did not concern the gods, or the gods could not intervene, but because uncertainty of knowledge about the gods made it difficult for people to discuss and identify this — to talk about when and how and why the gods would intervene in a particular case.

This chapter has shown how references to divine law or divine action concerning the enforcement of law can be read as *claims* to religious authority. Such claims are made when litigants speak of religious crimes or the affairs of the Areopagus court, that is, in the context of subjects about which Athenians could speak with more confidence and knowledge about the gods. As an offence to the gods, it is easier to imagine what the gods' position with regard to impiety is than with most other offences. Of course, even with impiety there is still an element of unknowability, as the competing portrayals of religious authority in Andocides 1 and Lysias

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<sup>688</sup> See Chapter Four for references to and discussion of Martin (2009); Carey (1999).

<sup>689</sup> See especially Parker (1997).

<sup>690</sup> Mikalson (1983), 28.

6 exhibit.<sup>691</sup> As the principal legal court for religious offences and, significantly, as a court whose story of origins is a well-attested myth involving deities, the Areopagus court with its regulations carried features a speaker could easily associate with divine origins.<sup>692</sup> The statements of divine action can be understood in the same way: in situations of high-risk, such as seafaring, litigants attribute deeds to their deities. As noted above, Greek religious belief and cultic practice was often focused on spheres of activity with great importance and risk, such as agriculture, warfare, and undertakings dependent on the unpredictable perils of nature. Such situations were also ones with which the gods are frequently associated and on which ritual actions focuses. As such, speakers could more easily make claims about the will, desires and actions of the gods related to these related activities.

We therefore find a double notion: divine authority can and does influence human affairs, but there is no certain way to ensure one can deduce this same authority. This portrays a sentiment similar to a statement by Xenophon about the gods, frequently seen as indicative of his religious belief:<sup>693</sup>

They [the gods] know all things, and warn whomsoever they will in sacrifices, in omens, in voices, and in dreams. And we may suppose that they are more ready to counsel those who not only ask what they ought to do in the hour of need, but also serve the gods in the days of their prosperity with all their might (Xen. *Eq. Mag.* 9.9).

Xenophon even questions the correlation between honouring the gods and receiving revelation from them. While such a notion may not appear in oratory, the unknowability it expresses nonetheless seems present in the absence of the gods from so many parts of public discourse.

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<sup>691</sup> Cf. Gagné (2009), 231-238.

<sup>692</sup> Martin (2009), 290 suggests, “differences between the Areopagus and the heliastic courts may be bigger than between public and private cases”, corroborating further study is required here. Parker (1996), 130-131 importantly points out that the Areopagus was still considered the citizen body: it was the city at its most solemn. Cf. Petrovic and Petrovic (2016), 156-160.

<sup>693</sup> For analysis of this statement and its place within Xenophon’s religious discourse, see Bowden (2004), 232.

In conclusion, this chapter has illustrated the flexibility and variety of conceptualising a connection between the gods and the activity of legislation: more often than not, divine and human agency work together, in varying balances depending on the context.<sup>694</sup> The authority of the law and the authority of the gods operate in harmony. The assumption that laws correlate with divine will forms the backbone of their legitimacy, even if this does not exclude or limit human agency in their creation and enforcement. The way they relate to each other can perhaps be understood in light of the way human and divine matters in general were conceptualised in the Greek world through the phrase *hiera kai hosia*. That these two terms should not be considered oppositional, as sacred versus profane, has long been accepted, though Josine Blok's recent attempt to define these terms is helpful to better understand the human conceptualisation of the place of the gods in their world. Aeschines' famous description of the order of business conducted at Assembly meetings helpfully illustrates the importance of *hiera* and *hosia*:

After the purifying sacrifice has been carried round and the herald has offered the ancestral prayers (τὰς πατρίους εὐχὰς), he [the legislator] commands the presiding officers to hold a preliminary vote to select matters for debate pertaining to ancestral *hiera* (ἱερῶν τῶν πατρίων), and for heralds and embassies, and matters pertaining to *hosia* (ὀσίων) (Aeschin. 1.23).<sup>695</sup>

This passage exemplifies how the divine stands above and behind political matters, perhaps not obviously, but there nonetheless. Blok's explanation of *hosios* as a value term "for the proper conduct and respect of humans towards gods and other humans" furthers our understanding of how certain spheres or activities are portrayed as concerning humans, yet still always of concern to the gods: it means "honouring relationships between humans by which the gods set great store".<sup>696</sup> The connection between the terms *hiera* and *hosia* thus,

acknowledges the differences between gods and men, and between the kind of obligations humans have toward each party, but in no way entails an opposition

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<sup>694</sup> Cf. Willey (2016), 177; Harris (2004), 28.

<sup>695</sup> Cf. *Ath. Pol.* 43.6.

<sup>696</sup> Blok (2017), 63.

between their spheres of action, let alone between sacred and profane domains. Instead, (...) the ancient Greek perception of society can be rendered as a covenant between humans and gods, and *hiera kai hosia* as the synopsis of all relations of exchange and obligation between gods and men contained in the covenant from the human perspective.”<sup>697</sup>

The *nomoi* of the Athenian people can be seen in this context as similar to *hosia*: they are cast in oratory as largely human affairs, though in essence still sanctioned by the divine.

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<sup>697</sup> Blok (2014), 33.

## Conclusion

This thesis set out to examine how litigants in the law courts and speakers in the Assembly constructed and employed religious discourses in classical Athens, and what this reveals about the place of religion not only in the legal and political decision-making processes of the city, but in Athenian society generally. In its focus on authority, this study aimed to investigate how the orators could say what they do about the divine. Chapter One, showcasing the methodological framework of this study, demonstrated how the notion of authority could be used as a tool to deconstruct the religious discourses in oratory. Not only does a more sociologically sensitive conception of authority allow for a reading of oratory as a genre of performative texts in which orators speak persuasively, yet do so from an authoritative position; authority as a dynamic and constructed process is also a useful tool with which to approach religion in ancient Greece. Specifically, such a notion recognises the plurality and dispersed nature of authority in Greek religion, acknowledging this amounts to more than merely formal legislative power: it is also influence and legitimacy constructed. Oratory, then, is both a source for the understanding of the nature of religious authority in antiquity, and itself a source of potentially authoritative speech operative in classical Athens.

The subsequent chapters of the thesis built upon this framework by investigating a number of sources of religious authority which orators draw on as building blocks for what they say about the divine. Chapters Two and Three examined divination – the technique and mode of communication that produced signs which held highest religious authority in Greece. Chapter Two demonstrated how oracular messages in the orations of Demosthenes, Dinarchus and Aeschines differ from those found in Lykourgos' *Against Leokrates* in format, function and authority. The former present oracles as written depositions of evidence: they are usually statements of a general and non-specific nature, though used in speeches as proof for very specific arguments about one's opponent; they are de-contextualised from their original context of consultation and re-applied to different situations. As such, the divine origin and



nature of these oracles is not particularly emphasised, as their authority appears to come more from their role in corroborating laws, rather than their role as source of divine authority. Chapter Two also examined whence these oracles could have come, as the question of origin affects how these messages might have been understood: a collection of oracles preserved in the Metroon or another city official's archives would mean these documents were stored in a way similar to laws, while a collection of oracles like those of legendary *chresmologues* such as Bacis and Musaeus might suggest the role of the orator himself is similar to that of a *chresmologue*. Lykourgos, on the other hand, employed oracles to say something about divine will and the uncertainty implied in constraints of human knowledge of the divine. Oracles here are sources of religious authority, which Lykourgos also uses to imbue his statements with a sense of divine authority. As the narrator and – importantly – interpreter of the gods' messages, he strengthens his claim to authority with a sense of religious expertise. This plurality in the way oracles are presented – both as general law-like maxims, and cryptic 'literary' stories – illustrates the flexibility and variety of the ways oracular divination could be understood, used and rhetorically exploited in fourth-century Athens. It nuances the disparities between the pictures of divination painted by different genres of evidence.

Chapter Three showed that divine signs could be used not only as proof in speeches, but also as the first port of call in conflict resolution, before a dispute even reaches the stage of a law court. The analysis of Hyperides' *Against Euxenippus* presented a case study of the use of an oracular dream to resolve a problem of land allocation. The speech displays the intricacy of consulting a god through incubation, as a process comprising a number of different stages in which human fallibility complicates the transmission of divine will from its expression in a dream through to human understanding of this will. The case of Euxenippus cautions against an overly-rigid separation between public and private oracular practices, showing that even public divination relies on individuals throughout every stage of consultation and interpretation. The interaction with, and message from, the god is governed by many steps: the choice of individual for the incubation process, his reception of a dream, and the community's acceptance and interpretation (or acceptance of the interpretation) of it. It exhibits how the divine message,

the Athenian *demos* and religious experts function together, and how the authority of these elements can nonetheless be challenged at different stages of the process of transforming the dream into an understanding of divine will.

Chapter Four questioned the dismissive treatment oaths in oratory have regularly received, by arguing they are not merely rhetorical tools of persuasion or casual interjections completely disconnected from their original function as a mechanism which makes binding an assertion, denial or promise. Rather, oaths are consequential performative speech acts considered efficacious, if risky, in nature. Of course, recognizing a scale of seriousness is important here: not all oaths are equally solemn, and many evidently have a rhetorical function. Yet this chapter has argued that it does not follow that, because they are rhetorical, expressed in a conventional way and occur regularly, they cannot at the same time be taken as authentic oaths, as mechanisms anchoring language. By swearing to the truth of a statement and by naming a deity, an oath transforms a statement into one with a higher authority, binding not only swearer and deity, but the audience of the statement too. Oath-swearing allows the speaker to speak authoritatively, as if with the protection of the gods, while forcing the audience either to believe the speaker or else to consider the speaker's action as a religious offence, thereby compelling the audience to assess the situation in terms of the reaction of, and relationship with, the divine.

The last chapter of this thesis concluded the investigation into religious authority in oratory by examining the mechanisms connecting the divine with law and its authority. This chapter first presented a new analysis of the often-ignored passages where litigants suggest divine involvement in the construction of law. It demonstrated that law is mostly presented as a human construction but at times seen as divine – in particular with reference to the rules and regulations governing the Areopagus and the Eleusinian Mysteries, particularly solemn and important settings. However, instead of seeing references to divine authorship of law as exceptional oddities, the chapter demonstrated that these claims were similarly built to the more regular discourse which attributes the construction of law to the ancient lawgiver. The

discourse on the origin of law therefore mirrors the way the relationship between religion and law functions more generally: they evidently cannot be separated out completely, but have a more complex connection, where divine and legal forces are combined for the enforcement of society's norms. Similar too for the notion of divine intervention in the administration of justice and enforcement of law, the gods are invoked for matters human knowledge cannot solve itself, to deal with uncertainty and risk. The gods support, enable and facilitate the human process of punishment through their sanction and protection of law, as well as making use of it themselves.

These separate analyses together paint a picture of Greek religion which ties in with recent conceptions, characterising religion as a diversified set of beliefs and practices which are linked together by a number of established parameters about the gods and a range of shared practices of customary communication and ritual, yet nonetheless leaves room to manoeuvre. It remains broad and loose enough that, even in a setting like oratory which is regulated both by a goal of persuasion and by the necessarily optimistic outlook of public discourse, variation is possible. Oracles can be both law-like parallels and ambiguous messages in need of interpretation; laws can be both divine in origin and inheritances from ancient lawgivers; the swearing of formal oaths by litigants can be considered inappropriate and unappealing for approval-seeking litigants, or powerful, meaningful mechanisms which involve the gods and add a higher authority to one's statement. The gods can be hardly mentioned in a speech arguing for justice, or presented as all-knowing, all-seeing judges. Variety is found in oratory not only in the way religious elements are portrayed to their audience, but also in how they are viewed and employed by the orators. Danielle Allen has suggested scholarship traditionally has focused on "outlining the orthodox ideological stances that an orator needed to assume in order to succeed at arguing their case before a popular jury" – yet orators also made "radically heterodox political or ethical claims."<sup>698</sup> The same can be said about religious claims – though of course, within certain limits. Studies of religion have long recognised that how one worships the gods

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<sup>698</sup> Allen (2000), 5.

in ancient Greece depends very much on one's location in time and place, and one's status in society: plurality and local variety are recognised in both ritual action, how one communicates with the gods, and mythology, the stories one tells about deities. The recent turn towards cognitive understandings and the religious mentalities of the ancient world maintains a similar plurality should be seen in the 'theologies' of Greek religion, in the conceptualisations of the divine and how they affect human society.<sup>699</sup> This thesis contributes to the evaluation of this supposition by demonstrating that even within a genre of texts circumscribed by place, time and context, speakers could say very different things about the gods, they could say very much about them, or they could say very little. The religious discourse of a speech can be seen as the individual appropriation of religious practices and elements, and conceptions of the divine, which form part of an acceptable religious tradition, both loose and multifaceted. A speaker in the Assembly or litigant in a court case thus selects and adapts religious elements and arguments, as relevant and appropriate for the occasion of the speech and its rhetorical and social context. This thesis hopes to have made a first step towards a more thorough investigation of such appropriations, of the way in which orators attempt to 'make sense' of religion.

One notable feature of the range of sources suggestive of religious authority and references to religious elements which this thesis has analysed, is the rarity of these occurrences. In the whole corpus of Attic oratory we have debated and dissected nine oracles in six speeches, one lone dream, four freely-sworn formal oaths, three statements discussing law as a divine creation, and five speeches which suggest divine intervention in the enforcement of law. Speakers in the settings of the Assembly and the law courts – and in particular the former – discuss sources of religious authority such as divine signs or the possibility of divine law infrequently, and the same can be said of elements which bring in the gods, such as the swearing of formal oaths and the attribution of acts of intervention to the gods. As the analysis of these religious components throughout these chapters has shown, their rate of occurrence

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<sup>699</sup> See Eidinow, Kindt et al (2016), 2.

in oratory has considerably affected the way scholars have traditionally interpreted them. Often the infrequency of these religious elements is deemed a correlative of their significance: the recourse to divination in the dispute of land allocation at the centre of Hyperides' *Against Euxenippus* is explained simply through the connection of the deity himself to the land at stake and therefore considered exceptional; references in oratory to the divine authorship of law are ignored in most studies of Greek law as they are so rare; gods are only said to intervene directly in human affairs with regard to sea voyages, meaning such claims should be judged meaningless *topoi*. Similarly, yet oppositely, oath-swearing – the one religious element oratory is well-supplied with – is also interpreted through reference to its frequency, though here an abundance is taken as negatively as a scarcity: informal oaths are so conventional that they are said to have lost religious meaning altogether, little more than recurrent trivial interjections. However, this concentration on frequency as an explanation for the importance of religious elements in the business of oratory (both its immediate aim of persuasion and its nature as evidence for decision-making in classical Athens) misses the point.

Rather, this thesis has shown the rarity of religious references is not evidence of unimportance. It has demonstrated divination is taken seriously in political and legal decision-making, while through the recognition of oaths – even informal ones – as consequential, performative speech acts which bind a swearer to a statement it has determined the frequent naming of gods in orations carries religious meaning. Furthermore, this study has confirmed those speeches and occasions which do bring in a religious element are often considered important in Athenian society: the gods emerge as authors of laws precisely amidst talk of the Areopagus and the Eleusinian Mysteries.

How then might these rare passages and religious references be understood? Traditionally, scholars have attempted to use the notion of propriety. Locating the exceptionality of these religious discourses in their *pronouncement* in the context of oratory, rather than in the ideas themselves, orators are said to be confined by what is acceptable to say in a public setting. So Martin explains the higher frequency of religious argumentation in public trials compared to

private ones as the result of religion being only appropriate in situations of elevated importance. What can be said about the gods is regulated accordingly by the nature of oratory as public speech, which necessitates a censored optimistic portrait of benevolent and just gods, supportive of Athens, as Robert Parker has shown.<sup>700</sup> However, by highlighting variety in the treatment of religious authority and religious ideas, this thesis has shown that the exceptionalness of the religious discourse throughout oratory should be located not only in its pronouncement in public discourse, but also in the application of such ideas themselves. Furthermore, this thesis has attempted to move beyond such explanations to analyse *why* something might have been considered appropriate or inappropriate in a given context. Through its analysis of the sources of religious authority employed in oratory, this study draws attention to additional factors which complicate and make precarious and risky what the orators can say about the gods.

The first point to emphasise is the nature of religious authority in ancient Greece as diversified and disparate. This thesis has established that even oracles – explicit direct sources of authority religious in terms of origin – are not always tools of communication that straightforwardly transmit the will of the gods to their human worshippers. Signs obtained through divinatory practices require a number of steps to move from conception to understanding. This may involve a process of interpretation (as Lykourgos does in his quotation of oracles), or simply one of application (as the re-contextualisation of oracles in other speeches shows): these processes in turn may be open to contestation, as different entities and their authority come into play (as shown in the case of Amphiaraos' dream).

Second, as a consequence too of the unknowability of the Greek gods, references to divine will or divine action are never simple statements of knowledge or fact: on the contrary, they often appear to require and thereby indicate a certain authority on behalf of the speaker too, such as interpreter of divine signs, as above. Swearing an oath is religiously meaningful less for the

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<sup>700</sup> Parker (1997).

threat of divine punishment it engenders, but more for including the gods into one's speech. It allows the speaker to make a statement which receives higher authority, which the audience must take seriously and which serves as a mechanism by which a speaker implies something about his own relationship with the gods. The same hint of authority manifests itself in statements about divine intervention. As Chapter Five demonstrated with the Lysianic *Against Andocides* and Lykourgos' *Against Leokrates*, arguments of a god using a trial to punish a wrongdoer contain the implication that the speaker advancing such claims himself plays a role in the divine action, as an agent through which the gods administer justice. This suggests that making a claim about the gods at the same time makes a claim about the speaker himself – which may make the pronouncement of such claims attractive to certain speakers, but at the same time evokes a certain risk.

Third, speculation about the gods' will concerning particular situations, or the will of particular gods, is rarely possible in oratory as a genre.<sup>701</sup> If one considers the act of speculation a high-risk strategy, this together with the fundamental unknowability of the gods explains why orators might often not wish to incorporate the gods into their speeches. This would also explain why we do find a correlation between religious discourse and elements or contexts of elevated significance and solemnity – it is not because the gods are not thought to be involved with, or to care about, less elevated matters. The chapters which deal with oaths and laws have demonstrated the importance and presence of the gods in all spheres of human life – though not in a straightforward, direct way. Reference to religion is part of the toolkit of an orator in trying to make sense of events and argue a particular case, even if he does not often choose to use it. Rather, it is simply easier for speakers to know something and say something about the sphere of the divine when discussing well-known and established matters: the gods' involvement in the creation of the Areopagus court, as expressed in myth, makes it easier for a speaker to imagine what the gods' interaction with and reaction to the Areopagus court and its proceedings might look like. Similarly, how a god might react towards an offence of treason,

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<sup>701</sup> As Parker (1997), 158 points out.

compared to one of mismanagement in an inheritance dispute, for example, might be considered easier to gauge: enough examples of divine treatment of the first type of crime exist in depictions and tales of myth, while the second type may be harder to find.

To speak persuasively is not an easy thing in classical Athens. To do so while talking of the gods, which involves making claims that invest acts, people, places, one's own or someone else's words with an authority, the source of which lies beyond the human, is even harder.<sup>702</sup> Further research is needed to examine what makes this difficult yet possible, or difficult and impossible. This thesis, however, has aimed to show that one can better understand the absence and the presence of religious discourse in oratory by paying attention to variety in religious discourse as the appropriations of a diverse set of religious beliefs and practices, and take seriously the risky nature of talking about the unknowable gods.

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<sup>702</sup> Cf. Lincoln (1994), 112.



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